

## **Local Rules**

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**LR54-AR00-1**

**Civil Case Assignments**

Civil actions and proceedings in the Montgomery Circuit and Superior Courts shall be assigned among the courts as follows:

A. Montgomery Circuit Court: Any civil actions or proceedings and all juvenile actions or proceedings.

B. Montgomery Superior Court 1: Any civil actions or proceedings; all probate actions or proceedings; and all civil domestic relations proceedings in which the Prosecuting Attorney has appeared pursuant to 42 USC Section 602(a)(26), as amended ("Title IV-D" proceedings).

C. Montgomery Superior Court 2: All civil cases founded on contract or tort in which the claim does not exceed the statutory small claims jurisdictional amount; all possessory actions between landlord and tenant in which the claim does not exceed the statutory small claims jurisdictional amount; all actions for possession of property where the value of the property sought to be recovered does not exceed the statutory small claims jurisdictional amount; all infraction and ordinance violation cases; any civil action; and any juvenile proceeding, or probate proceeding transferred from Circuit Court or Superior Court 1.

D. The Judge of the Circuit Court and the Superior Court 1 shall each serve as Judge Pro Tem of the Superior Court 2 for a block of time of one day each month, at which time small claims proceedings shall be heard.

#### **LR54-AR00-2**

#### **Court Hours**

A. The Montgomery Circuit and Superior Court 1 offices shall be open from 8:30 a.m. until 4:30 p.m., Monday through Friday, legal holidays excluded, and at such other hours as each Court may from time to time order.

B. The Montgomery Superior Court 2 office shall be open from 8:30 a.m. until 4:30 p.m., Monday, Wednesday, and Thursday. Tuesday hours are from 8:00 a.m. to 6:30 p.m. Friday hours are from 8:00 a.m. to 12:30 p.m. Legal holidays excluded, and at such other hours as each Court may from time to time order.

C. The office of the Clerk of Courts shall be open from 8:30 a.m. until 4:30 p.m. Monday through Friday, legal holidays excluded, but may be closed on days that the Judge of the Circuit Court orders the Court closed in accordance with the custom and practice of the Court, or as may be dictated by the necessity of the situation. Any legal action required to be taken in the office of the Clerk during the time the office is

closed may be taken on the next following day the office is open.

D. When weather conditions require or other emergencies arise, any Court closing shall be made by the Judge of the Court after consultation with a representative of the County Commissioners and the Sheriff. The Court shall make every effort to contact litigants scheduled for Court.

#### **LR54-AR00-3**

##### **Trials**

A. Jury trials shall begin promptly at 9:00 a.m. unless otherwise directed by the Court. The prospective jurors, the attorneys and the litigants shall report at 8:30 a.m. on the first day of trial and thereafter as the Court shall direct.

B. Court trials and hearings shall begin promptly at the time assigned. The attorneys and the litigants should arrive substantially in advance of the scheduled time for the purpose of entering into any last-minute stipulations or agreements. Negotiations or settlement discussions should be concluded prior to the hearing or trial time.

#### **LR54-AR00-4**

##### **Briefs and Memoranda**

A. All motions filed pursuant to Trial Rules 12 and 56 shall be accompanied by a separate supporting brief. An adverse

party shall have thirty (30) days after service of the initial brief in which to serve and file an answer brief, and the moving party shall have ten (10) days after service of the answer brief in which to serve and file a reply brief. With regard to all other motions or matters submitted to the court, and so long as consistent with the Indiana Rules of Procedure, an adverse party wishing to respond shall do so within ten (10) days of service. The moving party shall have five (5) days after service of the response within which to reply. Each motion shall be separate, while alternative motions filed together shall be identified on the caption. Failure to file an answer brief or reply brief within the time prescribed shall be deemed a waiver of the right thereto and shall subject the motion to summary ruling.

B. Authorities relied upon which are not published in the "National Reporter System Second Series" shall be attached to the brief. If the authority is cited for the first time in oral argument, a copy of the authority shall be provided to the Court and to counsel for each party at the time of the argument.

#### **LR54-AR10-5**

#### **Exhibits**

A. After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried before the Court shall be placed

in custody of the Court Reporter unless otherwise ordered by Court.

B. All models, diagrams, exhibits, or materials placed in the custody of the Court Reporter shall be removed by the parties offering them in evidence, except as otherwise ordered by the Court, within sixty (60) days after the case is decided unless an appeal is taken. In all cases in which an appeal is taken, they shall be removed within thirty (30) days after the appeal is finally resolved. At the time of removal, a detailed receipt shall be given to the Court Reporter and filed in the cause. Items which are not claimed by parties shall be deemed abandoned, and the Court will dispose of the model or exhibit as the Court deems appropriate.

C. In all contested hearings and trials, the attorneys shall prepare and submit to the Court Reporter a schedule of exhibits. Attorneys shall pre-mark all exhibits. Plaintiffs and petitioners shall use numerals and defendants and respondents shall use letters.

#### **LR54-AR00-6**

##### **Decorum**

A. The attorneys shall be punctual, shall arrive at court early for hearings, and shall instruct clients and witnesses to

be present before a hearing or trial is scheduled so that the Court's business may move with dispatch.

B. The attorneys, parties and witnesses shall dress in a manner which is appropriate to the dignity and the formality of the Court.

C. The attorneys, parties and witnesses shall conduct themselves in Court in a restrained and dignified manner. No person should lean on the bench nor sit on counsel tables.

D. No person while in the courtroom shall smoke, chew tobacco, eat, or drink. No person shall converse, read material or use a computer or other electronic devices in a manner which might be offensive or distracting to the Court or any other person present in the courtroom. Attorneys and parties who find it necessary to converse during the course of a hearing or a trial shall do so as quietly as possible and in tones calculated not to distract, disturb or influence the Court or any other person present in the courtroom.

E. Cell phones and pagers are strictly forbidden in the courtroom. Persons shall check such devices with court staff while court is in session.

F. Entering and leaving the courtroom should be done as infrequently and unnoticeably as possible.

G. The offices of the Court, the Judge and the court staff are not to be considered by the attorneys, litigants, or other parties as their own private offices or as being readily available for the use of the attorneys, litigants or other parties. The Court and its staff will assist attorneys as it is convenient, but the attorneys should not expect the court staff to relinquish their telephones, computers, copiers, desks, or their time for the attorneys' use or benefit. The Court and its staff reasonably expect to perform their work without distraction or interference from attorneys, litigants or other parties.

H. Lawyers shall not talk to or in any way distract the Court Reporter during hearings in which the lawyers are not participating.

**LR54-AR00-7**

**Body Attachment**

A. Upon failure of a judgment debtor, garnishee defendant, or child support obligor (herein referred to as judgment debtor) to appear as ordered for a scheduled hearing, the judgment creditor, including child support obligee (herein referred to as judgment creditor) may request a body attachment as to said person. A body attachment shall be issued only when:



- (1) The judgment debtor previously ordered to appear for a scheduled hearing was personally served with notice or notified in open court of the hearing;
- (2) The request for body attachment is filed within thirty (30) days of the failure to appear; and
- (3) The judgment creditor provides information to enable the Sheriff to locate and identify the judgment debtor, including address, social security number and date of birth.

B. When the judgment creditor requests the issuance of a body attachment, and as needed at any time thereafter, said creditor shall file with the Court a telephone number at which the Court may notify the creditor of the attached person's appearance in custody. Upon such appearance in custody, the Court, to the best of its ability and consistent with the continued performance of its daily responsibilities, shall:

- (1) Attempt to contact the judgment creditor at the telephone number on file with the Court; and
- (2) Thereby notify the creditor of a time later during the same Court business day at which the attached person will be brought before the Court for questioning by said creditor.

C. The attached person shall be released upon payment of the escrow amount and the proceeding shall be rescheduled for hearing and the judgment debtor ordered to appear at that hearing.

D. Body attachments expire 180 days after issuance. If the judgment creditor desires to recall a body attachment, the judgment creditor shall file a written request therefor or appear personally or by attorney and move on the record for recall of the body attachment, and shall state in writing or on the record the reason for the recall.

E. An expired body attachment may reissue upon proper application by the judgment creditor.

#### **LR54-AR00-8**

#### **Attorney's Fees**

A. No order granting a request or prayer for attorney fees shall be made unless such fees are allowable under applicable law and there has been evidence furnished by testimony of an attorney, if the application for fees is contested, or by affidavit of an attorney, if the application is uncontested. Such testimony or affidavit shall describe the services rendered and establish to the Court's satisfaction the amount of time expended (or to be expended) in the matter, the fact that such services and time were or are reasonably

necessary considering the nature and complexity of the matter, the experience or expertise of the attorney seeking an attorney fee award, the usual and customary charges, and the reasonableness of the fees sought.

B. The Court shall not take judicial notice of reasonable fees except when requested and all the following conditions are satisfied:

- (1) The parties affected are notified of the request to take judicial notice so as to permit such affected parties opportunity to object to or oppose the request, unless such affected parties have been defaulted or failed to appear;
- (2) The case involves only routine services; and
- (3) Modest fees are sought.

C. Judicial notice of reasonable fees shall not be taken in cases involving promissory notes or foreclosure actions. In any event, the award of attorney fees shall be within the sound discretion of the Court.

**LR54-AR00-9**

**Confidential Documents**

Confidential matters shall not be set forth openly in pleadings, either as part of the text of the pleading or as an attachment. Such matters may be incorporated by reference to

materials which have been or are to be independently furnished to the Court and are held by the Court in a separate file for confidential documents, or may be submitted with the pleading and contained in a sealed envelope marked "Confidential-not to be opened without court order" and upon which the caption of the cause has been typed. All copies of the pleading shall conform to this rule. The CCS shall state where such confidential documents are kept.

Confidentiality may also be preserved through the use of protective orders and "green paper" as provided by Trial Rule 5(G).

#### **LR54-AR00-10**

##### **Law Library**

No books belonging to the court library shall be removed from the library by any person other than a Judge of any of the courts, unless permission is given by one of the Judges or the Judges' law clerk. The borrower shall sign a sign-out sheet giving the borrower's name, date and time of withdrawal and where the book is taken. All books shall be returned within 24 hours; if the library is closed, the books shall be left with the Bailiff.

COURT REPORTERS

A. Salaries and Per Page Fees.

(1) Court reporters shall be paid an annual salary for time spent working under the control, direction and direct supervision of their supervising Judge during any regular work hours, gap hours or overtime hours. The supervising Judge shall enter into a written agreement with the court reporters which outlines the manner in which the court reporters are to be compensated for gap and overtime hours, i.e., monetary compensation or compensatory time off regular work hours.

(2) The maximum per page fee a court reporter may charge for the preparation of a county indigent transcript shall be \$4.00. The court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.

(3) The maximum per page fee a court reporter may charge for the preparation of a state indigent transcript shall be \$4.00.

(4) The maximum per page fee a court reporter may charge for the preparation of a private transcript shall be \$4.00.

(5) The maximum per page fees set forth in subsections (2),(3) and (4) shall apply only to transcripts prepared in the ordinary course of business or to be prepared within the time permitted by the Indiana Rules of Appellate Procedure. The fee

per page for expedited transcripts shall be \$6.00 if the transcript is to be prepared within two (2) weeks, and \$5.00 per page if the transcript is to be prepared within four (4) weeks.

(6) A minimum fee of up to \$40.00 may be charged by a court reporter for a small transcript.

(7) In addition to per page fees, a court reporter may charge the following:

(a) Index and Table of Contents pages may be charged at the per page rate being charged for the rest of the transcript;

(b) An additional labor charge approximating the hourly rate based upon the court reporter's annual court compensation may be charged for the time spent binding the transcript and the exhibit binders;

(c) A reasonable charge for the office supplies required and utilized for the binding and electronic transmission of the transcript, pursuant to Indiana Rules of Appellate Procedure 28, 29 and 30 is permissible; the costs for these supplies shall be determined pursuant to a Schedule of Transcript Supplies established and published annually by the judges of the courts of Montgomery County.

(8) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of either county indigent, state indigent or private transcripts

to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the Division of State Court Administration.

**B. Private Practice.**

(1) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the Court's equipment, work space and supplies, and the Court agrees to the use of the Court equipment for such purpose, the Court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:

- (a) The reasonable market rate for the use of equipment, work space and supplies;
- (b) The method by which records are to be kept for the use of equipment, work space and supplies;  
and
- (c) The method by which the court reporter is to reimburse the Court for the use of the equipment, work space and supplies.

(2) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, all such private practice work shall be conducted outside of regular working hours.

**LR54-AR12-12**

**FAX Transmission**

A. The Clerk of Courts will accept pleadings by electronic facsimile transmission ("FAX") so long as the FAX transmission complies with Trial Rule 5(F) and Administrative Rule 12. The Clerk shall file-mark said pleadings on the date of receipt.

B. The party transmitting pleadings by FAX must deliver the original document to the Clerk within three (3) days by regular mail. The mailed pleading must include the original signature of transmitting counsel. Failure to deliver the original document of the FAX transmission within three (3) days shall make such pleading subject to a motion to strike.

C. Upon receipt of the original document the clerk shall check the CCS and filemark the original the same date the fax was filemarked.

D. FAX transmissions shall be sent to the following telephone number: 765-364-6355

**LR54-FL00-13**

**FAMILY COURT**

A. The Family Court Rules issued by the Indiana Supreme Court, including definitions of "Family Court" and "Family Court



Proceeding", are adopted by reference and are attached hereto as Appendix B.

B. Any of the courts of Montgomery County may serve as a Family Court.

C. Cases shall be selected for Family Court upon recommendation of the Family Court Administrator or any of the judges and concurrence of the judges before whom each case is pending.

D. The judges of Montgomery County shall administer the Family Court Project jointly. The judge of the Montgomery Circuit Court shall be responsible for filing required reports and coordination with the Family Court Administrator and the Boone County Family Court Project.

#### **LR54-FL00-14**

#### **Parenting Education Workshop**

A. In any proceeding for dissolution of marriage in which there are minor children and in any paternity proceeding in Juvenile Court, both parents shall attend the Parenting Education Workshop. Attendance is mandatory for all parties in any dissolution of marriage proceeding and any paternity action if there are unemancipated children under 18 years of age. The course must be completed before the Final Hearing. The parties

shall be responsible for payment of the cost of the workshop, with an allowance for waiver of the fee for indigence.

B. Failure to complete the workshop within sixty (60) days of the filing the initial petition for dissolution of marriage or determination of paternity could result in a party being required to appear before the Court to show cause why he/she should not be punished for contempt of Court.

C. A copy of this rule shall be served upon the respondent when the petition for dissolution or petition to establish paternity is served, and a copy shall be given to each petitioner by counsel, or by the Clerk if petitioner is filing pro se.

#### **LR54-TR4-15**

#### **Electronic Signature Confirmation of Service**

The service of any pleadings, papers, or documents required to be served upon another party to the proceedings, and which are served by mail, may be proved by an electronic version which includes the certified mail certification number, the message that a successful delivery occurred, the date on which delivery occurred, and a scanned facsimile of the recipient's signature. This method of proving service comports with and satisfies the T.R. 4.15(B) requirement that "proof of service of all papers

permitted to be mailed may be made by written acknowledgment of service."

#### **LR54-TR5-16**

#### **Filing of Pleadings**

A. All pleadings shall be filed with the Clerk of Courts with the exception of requests for emergency orders under Trial Rule 65. Pleadings filed at or very near the time a hearing or trial is to commence should be filed in the Court office.

C. Pleadings which require a certificate of service will not be accepted for filing where the certificate of service merely states that service has been made on "all counsel of record". A certificate of service shall specifically name the individual party or attorney on whom service has been made, his or her address, in what manner the service was made, and the date upon which service was made.

D. Court personnel shall not be responsible for the filing of pleadings received by mail, unless certified or registered as required by Trial Rule 5(F). If the documents received by mail are not in proper form pursuant to the Indiana Rules of Procedure and these Local Rules, such documents will be returned to sender with deficiencies noted.

E. Any pleadings, papers, or documents filed with a court in electronic format shall be appropriately formatted or copied,

so as to separately identify information excluded from public access pursuant to Administrative Rule 9(G)(1) and allow the appropriate document to be filed with full information and a copy with confidential information redacted. See also LR54-AR00-9.

F. No provision included in this rule or omitted from this rule shall relieve attorneys or litigants of their duty to keep themselves informed of the current status of their cases in Court.

#### **LR54-TR3.1-17**

##### **Withdrawal of Appearance**

A. An attorney's appearance and representation in a case may only be withdrawn upon the filing of a written motion and an order of the Court granting such motion, except in the following instances:

- (1) The party authorized the withdrawal in open court;
- (2) The party authorized the withdrawal in writing, such authorization being verified; or
- (3) There is an appearance simultaneously filed by successor counsel.

B. The written motion shall state the reasons for withdrawal with specificity and must demonstrate written notice to the client of the intent to make application to withdraw the

appearance and representation. The notice must have been given at least ten (10) days prior to filing the motion to withdraw, shall advise the client that failure to secure new counsel may result in dismissal of the client's case or in the rendering of a default judgment, shall advise of the date and time the motion will be considered, and shall advise of the status of the case and of the existence and significance of any hearing dates or deadlines established by the Court in that case. The attorney shall in all other respects comply with Rule 1.16 of the Rules of Professional Conduct.

C. Withdrawal may not be permitted if less than 40 days remain until a trial or hearing date.

D. No withdrawal shall be permitted if such withdrawal would deprive the Court of jurisdiction over a party.

E. In the motion for withdrawal, the attorney shall certify the last known address and telephone number of the party if upon withdrawal no appearance is entered by successor counsel.

F. Until a withdrawal is granted the attorney continues to be responsible for all aspects of the case, including attending all trials and hearings.

G. Withdrawal of appearance in criminal cases will only be allowed pursuant to I.C. 35-36-8-2. A hearing shall be held,

with the defendant present, on all motions to withdraw based upon the grounds set forth in I.C. 35-36-8-2(b)(3-5).

**LR54-TR00-18**

**Proposed Orders**

A. The Court shall not be required to act on any motion, petition or other request for relief unless a proposed order is tendered.

B. All proposed orders submitted by counsel shall meet the following requirements:

- (1) Contain a complete distribution list of all attorneys and/or pro se litigants with complete addresses.
- (2) Include a sufficient number of copies of such proposed order as follows: Original for Court, copy for Court file, one copy for each attorney and/or pro se litigant, and sufficient copies for service by Clerk or Sheriff.
- (3) Include envelopes appropriately addressed, postage prepaid, for each attorney and/or pro se litigant on the distribution list, unless the attorney has a mailbox in the Clerk's office.

**Trial Settings**

A. All requests for trial settings or other evidentiary hearings shall include the following information:

(1) Type of trial or hearing (jury trial, court trial, final hearing in dissolution, etc.).

(2) An honest, good-faith estimate of the court time needed for the trial or hearing.

B. A proposed order shall be tendered with appropriate blanks for date and time.

C. Every opposing attorney or pro se litigant who receives such an order and either has a conflict with the setting or disputes the estimate of court time needed for the trial or hearing, or both, shall first contact the attorney or pro se litigant who obtained the setting and attempt to resolve the scheduling problem and agree on the date and amount of time for the trial or hearing. If unable to resolve the problem, the opposing party or pro se litigant shall then notify the Court in writing within ten (10) days of the receipt of the original order and give their honest, good-faith estimate of the court time needed.

**Continuances**

A. All motions for continuance shall be in writing, and shall be verified if filed by a pro se litigant.

B. The motion must be filed promptly upon the discovery of the cause therefor. Motions for continuance, including agreed motions, must be filed at least five (5) days, excluding Saturday, Sunday and holidays, before a court trial or hearing, and at least ten (10) days before a jury trial, unless good cause is shown.

C. Withdrawal or change of attorneys, in and of itself, shall not be sufficient basis for continuing a trial or hearing.

D. Motions for continuance shall include the following information:

(1) The specific reason the continuance is necessary (general assertions, e.g., "unavailability of counsel", "unavailability of witness", "other commitments", etc., shall be subject to summary denial).

(2) Whether opposing counsel has been advised that a continuance will be requested.

(3) Whether opposing counsel agrees to the continuance.

(4) The date and time of the hearing or trial for



which a continuance is sought.

(5) The approximate amount of time needed for such hearing or trial upon rescheduling.

E. All motions for continuance must be signed by the party who is requesting it or whose attorney is requesting it. If the party does not sign the motion, signature by the attorney is certification that the party has been notified of the request, agrees to the continuance, and understands the reason for which the continuance is sought.

F. Such motion and any accompanying affidavits or documents shall be served upon opposing counsel or the opposing party in person unless there is a showing that opposing counsel or the party has acquiesced or agreed to the motion to continue. The motion to continue will not be granted as a matter of course or as a matter of right. Unless the opposing party or attorney agrees or acquiesces in the motion, the motion will not be granted ex parte and the Court will not rule on the motion until three (3) days after filing, or six (6) days if served by mail.

G. The motion to continue, if granted, may be granted subject to the payment of costs or expenses connected with the continuance or for the delay of the trial or hearing which are necessarily incurred by the parties or by the Court.

H. Under no circumstances and in no case will any matter be continued or removed from the Court's hearing or trial

calendar without order of the Court granting such continuance or removal from the calendar.

#### **LR54-TR16-21**

### **Case Management Conferences**

#### **A. Status Conference**

(1) A status conference may be set in any pending case on the motion of any party or on the motion of the Court. A status conference shall be held in every matter requiring one day or more of trial time.

(2) A status conference should be requested and set as soon after the initiation of the case as is reasonable, allowing the attorneys and the parties sufficient time to acquaint themselves with the nature of the case. The setting should be within 90 to 180 days after the initiation of the case.

(3) The purpose of the status conference is to schedule the disposition of the case and to establish a timetable for pre-trial procedures. The attorneys shall bring their calendars to the status conference, or have their calendar available if the conference is conducted by telephone, so that scheduling conflicts will be avoided. Matters to be scheduled at the status conference are as follows: Trial; final pre-trial conference; settlement conference; use of alternative dispute resolution; conclusion of discovery; exchange of preliminary and

final lists of witnesses and exhibits and statements of contentions; names and reports of experts; filing of motions for summary judgment, briefing schedule and hearing date; filing of preliminary and final instructions, motions in limine and trial briefs.

(4) The Court will enter an order including the schedule agreed upon by the parties and the Court. The schedule may be altered only by Court order.

(5). The status conference may be held by telephone conference call. Upon scheduling the status conference, the Court shall designate the party responsible for arranging the conference call. Such arrangements shall be made far enough ahead of the scheduled conference time to allow every participant to be apprised of the manner in which the conference will be held.

#### B. Settlement Conference

(1) A settlement conference may be held in any pending case on the motion of any party or on the motion of the Court.

(2) The motion requesting a settlement conference shall be accompanied by a memorandum informing the Court of the nature of the case, the history of settlement negotiations, an indication of any particular impediment to negotiations, and advising the Court what benefit a settlement conference with the Court might provide to the parties. The Court must be assured that the

parties have made serious, good faith efforts to negotiate prior to requesting a settlement conference.

(3) Parties will be present in person. If a party is an entity other than an individual, that entity shall be represented in person by an officer or an agent delegated to the specific task and who has the authority to negotiate a final settlement on behalf of that entity. Any insurer or entity having authority to approve any final settlement shall be present by a representative having authority to enter into a final settlement.

(4) At least one week prior to the settlement conference each party will submit to the Court a confidential settlement statement. The statement will include the party's version of the facts, an appraisal of the strengths and weaknesses of their case and realistic settlement parameters.

(5) Before the settlement conference each party and the attorney for each party must have carefully reviewed the case and their position, evaluated the same, and arrived at a realistic appraisal of the value, strength and the likelihood of success of their side of the case.

(6) The settlement conference may be scheduled at any time after the case has been pending a sufficient length of time to allow for adequate discovery and accurate evaluation of each side of the case.

C. Final Pre-trial Conference

(1) The final pre-trial conference shall be attended by counsel who will try the case and who have the authority to bind the party represented with finality in any aspect that may arise during the final pre-trial conference.

(2) The Court may require that the parties attend the final pre-trial conference or that they be available for immediate consultation with their attorneys. If a party is an entity other than an individual, that entity shall have available an officer or agent who has the full and final authority to negotiate a final settlement or to make any other commitment or take any other action with regard to that party as may arise during the final pre-trial conference. Any insurer or entity having authority to approve any final settlement shall be present by a representative having authority to enter into a final settlement.

**LR54-TR79-22**

**Special Judges**

A. Pursuant to Trial Rule 79(H), after consulting with the other judges within the 4<sup>th</sup> Administrative District established in Administrative Rule 3(A); having considered the effective use of all judicial resources within such Administrative District; and having considered the accessibility

of those judges who are eligible for appointment by a trial court as a special judge pursuant to Trial Rule 79(J), the following judges shall be appointed pursuant to a local rule pursuant to Trial Rule 79(H), shall comprise the list for such appointments, and be selected alphabetically by last name on a rotating basis, as follows:

(1) Montgomery Circuit Court, Juvenile, and CHINS cases: The Honorable Matthew Headley, Judge of the Putnam Circuit Court; the Honorable Sam Swaim, Judge of the Parke Circuit Court; the Honorable Susan O. Henderson, Judge of the Fountain Circuit Court; and the Honorable Loretta Rush, Judge of the Tippecanoe Superior Court No. 3.

(2) Montgomery Circuit Court: The Honorable David A. Ault, Judge of the Montgomery Superior Court 1; the Honorable Susan O. Henderson, Judge of the Fountain Circuit Court; the Honorable Peggy Q. Lohorn, Judge of the Montgomery Superior Court 2; and the Honorable Sam Swaim, Judge of the Parke Circuit Court.

(3) Montgomery Superior Court 1: The Honorable Susan O. Henderson, Judge of the Fountain Circuit Court; the Honorable Peggy Q. Lohorn, Judge of the Montgomery Superior Court 2; and the Honorable Thomas K. Milligan, Judge of the Montgomery Circuit Court.

(4) Montgomery Superior Court 2: The Honorable David A. Ault, Judge of the Montgomery Superior Court 1; the Honorable Susan O. Henderson, Judge of the Fountain Circuit Court; the Honorable Thomas K. Milligan, Judge of the Montgomery Circuit Court; and the Honorable Kathy R. Smith, Judge of the Clinton Superior Court.

B. In the event that no judge is eligible to serve as a special judge or the particular circumstances of the case warrant selection of a special judge by the Indiana Supreme Court, such case shall be certified to the Indiana Supreme Court for the appointment of a special judge.

C. After a Special Judge is selected, the caption of all pleadings filed thereafter shall designate "BEFORE SPECIAL JUDGE \_\_\_\_\_" immediately below the cause number.

D. A copy of each pleading or each paper filed with the Court after a Special Judge has qualified shall be mailed or delivered to the office of that Special Judge by the counsel or litigant with service indicated on the certificate of service.

#### **LR54-TR79-23**

#### **Transfer of Jurisdiction**

A. It may, from time to time, be expedient for the Judges of the Montgomery Circuit and Superior Courts to transfer cases

between the courts. This shall be done with the consent of the two judges involved in the transfers.

B. When a Petition for Protective Order is filed and a Dissolution of Marriage action is filed involving the same parties, the Protective Order proceeding shall be transferred to the Court where the Dissolution is pending, if need be, and shall be consolidated with the Dissolution proceeding.

C. If a case is transferred, any request for a change of judge or county may be made by a party entitled thereto, in accordance with the provisions of Trial Rule 76.

D. It may, from time to time, be expedient for the Judges of the Montgomery Circuit and Superior Courts to hear cases pending in the other court. If the matter proposed to be heard by one of the judges in the other court is not an emergency, and if it is actively contested, any party or counsel of record may make timely objection to the hearing of such matter by the other judge, and the objection shall be sustained.

E. The Judge of the Montgomery Circuit Court authorizes the Judge of either Montgomery Superior Court to sit as Judge of the Montgomery Circuit Court, at any time, in any case.

F. The Judges of the Montgomery Superior Courts authorize the Judge of the Montgomery Circuit Court and authorize the Judge of the other Superior Court to sit as Judge



of either or the other Montgomery Superior Court, at any time, in any case.

G. A Judge of any of the three courts may sit in any of the other courts as judge pro tempore or as special judge.

H. In the event the regular judge of a court must recuse because the judge's spouse is acting as a lawyer in a proceeding, a Special Judge shall be selected pursuant to Trial Rule 79(H) and LR54-TR79-22(A).

#### **LR54-TR26-24**

##### **Discovery**

A. Objections to interrogatories or requests for admission shall be stated with specificity and certainty and the reasons therefor shall be accompanied by citation of legal authority.

B. Duplicated forms are discouraged and shall not be filed or served upon a party unless each interrogatory, request for admission or request for production of documents on such form is consecutively numbered and applicable to the case in which the same is filed and served. The intent and purpose of this Rule is to prohibit the filing of duplicated forms of "stock" interrogatories and requests for admission except where the nature of the case or the number of parties make the use of such forms necessary.

C. No party shall serve on any other party more than twenty-five (25) interrogatories or requests for admission other than requests relating to the authenticity or genuineness of documents without leave of Court. Subparagraphs shall relate directly to the subject matter of the interrogatory or request for admission. Any party desiring to serve additional interrogatories or requests for admission shall file a written motion setting forth the proposed additional interrogatories or requests for admission and the reasons establishing good cause for their use.

**LR54-TR47-25**

**Voir Dire**

A. The purposes of voir dire examination of prospective jurors are to select a fair and impartial jury, to discover any basis for challenge for cause, and to gain knowledge for the exercise of peremptory challenges.

B. Juror questionnaires shall be on file with the Court and copies shall be made available to counsel prior to trial. It shall be counsel's responsibility to obtain such copies and review them prior to beginning voir dire examination.

C. The Court shall place under oath the entire jury venire and all the members thereof shall remain in the courtroom during voir dire examination unless the Court orders otherwise.

D. The Court may conduct the entire voir dire examination. If it does, counsel will be advised at the pre-trial conference and will be given the opportunity to submit written questions or lines of inquiry to the Court for the Court's use in voir dire, up until no later than 72 hours prior to commencement of trial. During the course of voir dire examination counsel shall have the opportunity to supplement such written questions or lines of inquiry by submitting additional written questions or lines of inquiry to the Court.

E. In all cases the Court shall commence voir dire examination by questioning the venire as a whole with a view to establishing any bases of challenge for cause.

F. Any challenge for cause must be made by counsel at the time it becomes known, or the challenge will be deemed waived.

G. If the Court permits counsel to conduct voir dire examination upon the Court completing its examination of the venire, counsel shall have the opportunity to examine the panel seated in the jury box. Counsel shall not question those panel members if the question has already been asked and answered, if the question is based on anticipated instructions, if the question is based on a hypothetical situation which is counsel's own thinly veiled version of the facts of the case being tried, if the answer to the question is in the jury questionnaire, or if the question relates to insurance carriers, coverage, or

raises the innuendo of insurance involvement in the case in any way.

H. The Court may set a time limit on counsels' voir dire examination. Otherwise counsel will be expected to question efficiently and use only a reasonable amount of time.

I. The party having the burden of proof shall proceed first, and the opposing side will follow in each round of questioning. Absent extenuating circumstances, each side shall have only one opportunity to examine each member of a seated panel.

J. After each side has completed examination of the panel, peremptory challenges shall be made in writing, given to the Court, and the Court will excuse the challenged juror. Such challenges shall be made without comment and without consultation between opposing sides. If both sides excuse the same juror, each side will be charged with one peremptory challenge. If no challenges are made, counsel shall hand the Court a written acceptance of the panel as seated. Prospective jurors not challenged as set forth herein shall be deemed accepted.

K. If peremptory challenges are made and prospective jurors excused, replacement jurors will be seated in the jury box and each side will have the opportunity to question such replacement jurors and to challenge them as set forth above for

the original panel. Questioning and peremptory challenges in rounds following the examination of the original panel shall be limited to the replacement jurors only. Successive rounds of examination shall continue until a jury is selected. Alternate jurors, if ordered by the Court, shall be examined and selected by this procedure.

L. A prospective juror empanelled for voir dire examination who is not removed either for cause or peremptorily at the first opportunity for challenging is accepted as a juror and may not thereafter be challenged peremptorily, and may be challenged for cause only if such cause becomes known after the voir dire examination of such juror.

M. Only one attorney per party may question prospective jurors, object or argue objections in each round.

#### **LR54-TR74-26**

#### **Transcripts**

A. When an appeal is initiated by the filing of a Notice of Appeal pursuant to Rule 9(A) of the Rules of Appellate Procedure and a transcript for all or any part of the evidence is requested for the record on appeal, the person filing the Notice of Appeal shall contemporaneously deliver a copy of the notice to the court reporter and inform the reporter of the deadline for filing the transcript.

B. All requests for transcripts, whether or not for purposes of appeal, shall be made in writing.

C. All requests for transcripts shall be accompanied by tender to the court reporter of payment of the estimated cost of preparation of the transcript. Indigent criminal defendants, indigent civil litigants who file affidavits of indigency and are granted a transcript without payment, and certain governmental agencies are excepted from the advance payment requirement.

## **Appendix A**

### **LOCAL RULE 17**

#### **Visitation Guidelines**

*Local Rule 17 is included as an Appendix for historical purposes because it was incorporated by reference in many orders and decrees prior to the adoption of the Indiana Parenting Time Guidelines, effective March 31, 2001.*

It is usually in the child's best interest to have frequent, meaningful and continuing access to each parent. A visitation agreement made by both parents is preferred to a court-imposed solution. However, if parents are unable to agree on visitation, the following guidelines shall be used in most cases. In situations where the non-custodial parent may not have had on-going contact with the children, initial visitation may be shorter. Further, these provisions may not be applicable to very young children or in situations where geographical distances between parents make compliance impossible. The parents, in exercising visitation, should be flexible enough to adapt to the circumstances, the child's age, on-going activities, and any religious holidays not set out below.

#### **Sole Custody**

In sole custody orders, the primary care, custody and control of the minor children of the parties is granted to the custodial parent, subject to reasonable visitation by the non-

custodial parent at such times and places as may be mutually agreed upon by the parties. If the parties do not agree, the following shall be considered the minimum visitation to which the non-custodial parent shall be entitled:

- (1) Alternating weekends from 6:00 p.m. on Friday until 6:00 p.m. on Sunday.
- (2) In years ending in an odd number:
  - (a) The night before each child's birthday;
  - (b) Easter Sunday;
  - (c) Independence Day;
  - (d) Thanksgiving;
  - (e) From 12:00 noon on December 25 until 6:00 p.m. on December 26.
- (3) In years ending in an even number:
  - (a) Each child's birthday from 9:00 a.m. until 6:00 p.m.;
  - (b) Memorial Day;
  - (c) Labor Day;
  - (d) From 9:00 a.m. on December 24 until 12:00 noon on December 25.
- (4) Every year on Mother's Day weekend if non-custodial parent is the mother, or Father's Day weekend if non-custodial parent is the father;



- (5) During summer, for pre-school age children, two nonconsecutive weeks, to be determined by May 1 of each year.
- (6) During summer, for school-age children, two nonconsecutive two-week periods, to be determined by May 1 of each year.
- (7) There shall be no weekend visitation during the period the extended visitation is exercised.
- (8) If support obligation is current, support shall abate by 50 percent during the summer visitation set out in paragraphs (5) and (6). If support is not current, the 50 percent which would have abated shall be paid and shall apply to the existing arrearage.

Unless prior arrangements are made, the non-custodial parent shall pick up the children at the times specified and return them at the times specified, and the custodial parent shall have the children ready for visitation at the time they are to be picked up and shall be present at the home to receive the children at the time they are to be returned.

The non-custodial parent shall give the custodial parent not less than three (3) days prior notice if he or she does not intend to exercise visitation, unless an emergency situation

exists, in which case he or she will give as much notice as is possible under the circumstances.

Each parent shall supply the other with his or her current address and telephone number and inform the other of all changes. Each parent shall allow liberal but reasonable telephone and mail privileges with the children.

The custodial parent shall provide copies of all school and medical reports within five (5) days of their receipt and shall immediately notify the other parent in the event of a medical emergency. The custodial parent, within 24 hours of learning of such function, shall inform the non-custodial parent of school and social functions permitting the non-custodial parent's participation.

Neither visitation nor child support is to be withheld due to either parent's failure to comply with a Court order. If a dispute arises, the parties should first attempt to resolve the dispute through counseling or mediation.

If the parties agree to change the provisions of their decree of divorce, they shall petition the Court to approve and order such change. In the event that the parties do not obtain a Court order, the Court shall not be bound by any alleged agreement of the parties.

## **Appendix B**

### **Family Court Project Rules**

#### **Definitions**

**Family Court.** "Family Court" is the court or courts before which cases involving a family or household are linked together for purposes of case coordination. The individual cases maintain their separate integrity and separate docket number, but may be given a common family court designation. The individual cases may all be transferred to one judge or may remain in the separate courts where they were originally filed.

**Family Court Proceeding.** A "Family Court Proceeding" is comprised of the individual cases of the family or household that have been assigned to Family Court.

#### **Rule 1: EXERCISE OF JURISDICTION**

The Family Court may exercise jurisdiction over any case involving the family at the same time it exercises jurisdiction over a juvenile case (Child in Need of Services, Delinquency, Status, and Paternity) involving the family.

## **Rule 2: CONCURRENT HEARINGS**

The Family Court may, in the court's discretion, set hearings on related cases to be heard concurrently, take evidence on the related cases at these hearings, and rule on the admissibility of evidence for each cause separately as needed to adequately preserve the record for appeal. This rule applies only when the cases are pending before the same judicial officer.

## **Rule 3: DESIGNATION OF A FAMILY COURT CASE**

### **AND CHANGE OF JUDGE FOR CAUSE**

Once notice is sent to the parties that a case has been selected for Family Court, no motion for change of venue from the judge may be granted except to the extent permitted by Indiana Trial Rule 76.

Within ten (10) days after notice is sent that a case may be selected for family court, a party may object for cause to the Family Court designation.

A motion for change of venue from the judge in any matters arising in the Family Court proceeding or any future cases joined in the Family Court proceeding after the initial selection of cases shall be granted only for cause.

If a special judge is appointed, all current and future cases in the Family Court proceeding may be assigned to the special judge.

#### **Rule 4: JUDICIAL NOTICE AND ACCESS TO RECORDS**

**Notice of Case Assignment.** Within a reasonable time after a case is assigned to Family Court, the court shall provide to all parties in the Family Court proceeding a list of all cases that have been assigned to that Family Court proceeding.

**Judicial Notice.** Any court having jurisdiction over a case assigned to Family Court may take judicial notice of any relevant orders or Chronological Case Summary (CCS) entry issued by any Indiana Circuit, Superior, County, or Probate Court.

If a court takes judicial notice of:

- (a) a court order, the court shall provide a copy of that court order; or
- (b) a CCS or CCS entry(s), the court shall provide a copy of the entire CCS.

The court shall provide copies of the order or CCS to the parties to the case at or before the time judicial notice is taken.

**Access to Records.** Parties to a Family Court proceeding shall have access to all cases within the Family Court proceeding, with the exception of confidential cases or records

to which they are not a party. Parties may seek access to the confidential cases or records in another case within the Family Court proceeding in which they are not a party by written petition based on relevancy and need. Confidential records shall retain their confidential status and the Family Court shall direct that confidential records not be included in the public record of the proceedings.

## **Appendix C**

### **Plan for Allocation of Judicial Resources**

Cases shall be assigned to the Circuit Court, Superior Court 1, and Superior Court 2 of Montgomery County pursuant to LR54-AR00-1 and LR54-CR2.2-1. The judges of the courts shall annually review the caseload of each court and the weighted caseload statistics published by the Division of State Court Administration to determine whether the courts are within a range of 40 percentage points of the county average utilization of judicial resources. If any of the courts is not within range, the judges shall adopt such techniques as may be appropriate to adjust filing of cases, reallocate judicial time, share facilities, obtain appointed judicial officers, increase senior judge services, or adopt other measures to reduce such disparity.

## **Appendix D**

### **Jury Draw**

The Judges of the three courts shall appoint a Jury Administrator or Administrators pursuant to Indiana Jury Rule 2. The Montgomery County Clerk shall compile and maintain the jury pool annually by selecting names from lists approved by the Indiana Supreme Court.

Before November 15<sup>th</sup> of each year, the Clerk at the direction of the Jury Administrator(s) shall randomly draw 2000 names from the jury pool. Those persons shall make up the prospective jurors for the three courts for the ensuing calendar year. Not later than seven days after the draw, the Clerk shall, pursuant to Indiana Jury Rule 4, mail each person whose name was drawn a notice of selection for the jury pool, a juror qualification form and a jury questionnaire.

Not less than ten days prior to a jury trial a judge shall request the Court's Jury Administrator(s) to summon a jury. The judge will advise the Jury Administrator the number of prospective jurors required and when they should appear. The Jury Administrator will then select a panel of prospective jurors to be called and cause summons, including pertinent information for prospective jurors required by the jury rules, to be issued for members of the panel at least one week prior to the trial date.



## Appendix E

### **Electronic News Coverage Pilot Project**

The Montgomery Circuit Court has been selected to participate in a pilot project authorized by the Indiana Supreme Court. The pilot project is for Electronic News Coverage in Indiana Trial Courts.

Upon being selected as a court to participate in the pilot project, the Montgomery Circuit Court adopted the following:

MONTGOMERY COUNTY	)	IN THE MONTGOMERY CIRCUIT COURT
	) SS:	
STATE OF INDIANA	)	2006 TERM

#### **LOCAL RULES CONCERNING IMPLEMENTATION OF ELECTRONIC NEWS COVERAGE PILOT PROJECT**

**LR-54-AR00-6.50** The Court incorporates herein, by reference, Terms 1 through 7 and 9 of the Indiana Supreme Court's May 9, 2006 ORDER implementing the pilot project for video and audio coverage, still news photography, and radio news coverage of Trial Court proceedings. Those terms are attached as Exhibit A.

**LR-54-AR00-6.51** The Pool Coordinator, contemplated by Term 9 of the Supreme Court's Order, shall advise the court of the pooling arrangement which shall be subject to the approval of the trial court and the Indiana Supreme Court.

**LR-54-AR00-6.52** The court, the Pool Coordinator, and the media representatives who will be working the trial or hearing will meet the day before the hearing or trial to establish locations from which the media will work, to review these rules, and address any issues that may arise.

**LR-54-AR00-6.53** The media must be as inconspicuous and unobtrusive as possible.

**LR-54-AR00-6.54** The court has prepared a consent form. The court will provide the Pool Coordinator a copy of the consent signed by the parties and the judge. Once the consent has been given it shall be in force unless the court authorizes a withdrawal of the consent for good cause, or the court terminates or limits the electronic photography and reporting to meet the ends of justice.

**LR-54-AR00-6.55** The media will have the duty to investigate the cases on the court calendar to determine what cases would be suitable for electronic coverage. To that end the media should designate one person as court liaison to track the court's calendar.

**LR-54-AR00-6.56** The pilot project under which the electronic coverage of trial court proceedings is permitted is an exception to the Code of Judicial Conduct Canon 3B(12) and as such is to be executed narrowly to stay within the bounds of the exception, and not run afoul of the canon. Nevertheless, the Terms of the Supreme Court's Order and these rules will be broadly construed so as to effectively implement the spirit and intent of the Supreme Court's Order.

## EXHIBIT A

IN RE PILOT PROJECT	)	
FOR ELECTRONIC NEWS COVERAGE	)	Supreme Court Case No.
IN INDIANA TRIAL COURTS	)	94S00-0605-MS-166

## ORDER

Notwithstanding the prohibitions against broadcasting, televising, recording, or taking photographs in the courtroom and adjacent areas in the Code of Judicial Conduct Canon 3B(12), the Supreme Court, following discussions initiated by the Indiana Broadcasters Association, in conjunction with the Hoosier State Press Association, will authorize a limited pilot project for video and audio coverage, still news photography, and radio news coverage, of proceedings in certain Indiana courtrooms, under the following terms:

1. **Term.** July 1, 2006-December 31, 2007.
2. **Consent.** Coverage by camera and/or recorder as provided in this order may not be permitted except upon the written consent of the trial judges and the parties involved.
3. **Scope.** All civil and criminal proceedings will be eligible for camera and recorder coverage by the news media, except for proceedings not open to the public, either by state statute or Indiana Supreme Court rules. Additionally, the presiding judge shall have the authority to interrupt or prohibit the coverage of any part of a trial or proceeding if he or she deems such stoppage appropriate to meet the ends of justice.
4. **Prohibitions Regarding Coverage.** The presiding judge shall prohibit the filming and audio recording of the following:
  - a. Police informants;
  - b. Undercover agents;
  - c. Minors;
  - d. Victims of sexual abuse, assault, or other sex-related offenses;
  - e. For the purposes of this pilot project, a trial judge shall prohibit all camera and audio recording, taping, or broadcast of a juror or jurors in the courthouse;
  - f. Witnesses at sentencing hearings;
  - g. The trial judge has the discretion to allow post-verdict audio and videotaping of juror interviews

or press conferences, with the juror's or jurors' consent.

The presiding judge shall also prohibit the audio recording of the following:

- a. Parties and counsel engaged in attorney-client communications;
- b. Counsel engaged in co-counsel communications;
- c. Bench conferences.

5. **Cameras.** News cameras and audio equipment must not be intrusive of the judicial process. No more than one (1) video camera, one (1) still camera, and three (3) audio tape recorders are permitted in a courtroom during a trial. The still camera to be utilized is prohibited from using a flash or motorized film advancement. An existing audio system is to be used whenever adequate. Camera and recorder locations are to be set up only in areas designated by the presiding judge after consultation with the media. All cameras are to be on tripods and produce no distracting sound.

6. **Media Personnel.** Media personnel themselves are to be non-intrusive to the judicial process. Personnel may enter and leave only prior to the commencement of proceedings, during recess, or after adjournment. Appropriate attire is required.

7. **Equipment.** Media equipment can be set up or removed only prior to the commencement of proceedings, during recess, or after adjournment. There are to be no distracting lights or sounds.

8. **Pool Coverage.** For each trial involved in this pilot proposal, the media shall designate a coordinator whose responsibility shall be securing compliance with these provisions and coordinating a pooling arrangement. Specifics of the pool covered will be determined by the trial judge, in consultation with a representative from the Indiana Supreme Court. The media shall agree in advance of court proceedings as to the appropriate pooling arrangement. If the media cannot so agree, camera or audio recording coverage shall not be permitted. The purpose of this provision is to eliminate the necessity of involving the presiding judge in the resolution of any such dispute.

## **Local Criminal Rules**

LR54-CR2.2-1	Case Assignment
LR54-CR2.3-2	Transfer
LR54-CR2.2-3	Refiling and Subsequent Filings
LR54-CR13-4	Reassignment
LR54-CR13-5	Appointment for Special Judge
LR54-CR00-6	Discovery
LR54-CR00-7	Bond Schedule
LR54-CR00-8	Schedule of Fees
Criminal Appendix A	Discovery Order
Criminal Appendix B	Bail Bond Schedule
Criminal Appendix C	No Contact Notice
Criminal Appendix D	Plan for Allocation of Judicial Resources
Criminal Appenxix E	Jury Draw

**LR54-CR2.2-1**

**Case Assignment**

A. All traffic, infraction and ordinance violation cases shall be assigned to the Montgomery Superior Court 2.

B. Misdemeanor cases will be filed in Superior Court 2, Superior Court 1 and Circuit Court on a rotating basis so one-third of the cases are filed in each court.

C. All Class D felony cases and all cases for nonsupport of a dependent child shall be assigned to the Montgomery Superior Court 1.

D. All Class B and Class C felony cases shall be assigned to the Montgomery Circuit Court.

E. All Class A felony and murder cases shall be assigned on an alternating basis to the Montgomery Circuit Court and Montgomery Superior Court 1, with such cases to alternate between courts so that such offenses which occurred in odd numbered months shall be filed in Circuit Court, and such offenses which occurred in even-numbered months shall be assigned to Superior Court 1.

F. To promote judicial economy, the foregoing assignment of cases among the three courts shall be modified with respect to offenses charging the same defendant or arising out of the same or related incidents in which litigation is pending so that

the new charge may be filed in the court in which the defendant has already been charged or related litigation is pending.

G. This Case Assignment rule notwithstanding, consistent with LR 54-CR2.3-2 and the Family Court Rules, cases may be transferred from one court to another as may be appropriate.

#### **LR54-CR2.3-2**

##### **Transfer**

The judges of the Montgomery Circuit and Superior Courts, by appropriate order entered in the Record of Judgment and Orders, may transfer and reassign any case to any other court in the county, subject to acceptance by the receiving court.

#### **LR54-2.2-3**

##### **Refiling and Subsequent Filings**

When the State of Indiana dismisses a case and chooses to refile that case, the case shall be assigned to the court designated under the local criminal rule on Case Assignment. If additional charges are filed against a defendant subsequent to the assignment of the case, all such additional shall be assigned to the court in which the original case is pending.

**LR54-CR13-4**

**Reassignment**

A. The following judges shall serve in the event it becomes necessary to reassign a felony or misdemeanor case in the Montgomery Superior Court 2: The Honorable Gregory J. Donat of the Tippecanoe Superior Court No. 4; the Honorable David A. Ault of the Montgomery Superior Court 1, the Honorable Kathy R. Smith of the Clinton Superior Court; and the Honorable Thomas K. Milligan of the Montgomery Circuit Court.

B. The following judges shall serve in the event it becomes necessary to reassign a case in the Montgomery Circuit Court: The Honorable Susan Orr Henderson of the Fountain Circuit Court; the Honorable Matthew Kincaid of the Boone Superior Court No. 1; the Honorable Peggy Q. Lohorn of the Montgomery Superior Court 2; and the Honorable David A. Ault of the Montgomery Superior Court 1.

C. The following judges shall serve in the event it becomes necessary to reassign a case in the Montgomery Superior Court 1: The Honorable Susan D. Henderson of the Fountain Circuit Court; the Honorable Matthew Kincaid of the Boone Superior Court No. 1, the Honorable Peggy Q. Lohorn of the Montgomery Superior Court 2; and the Honorable Thomas K. Milligan of the Montgomery Circuit Court.



D. By order of adoption of these rules, the Indiana Supreme Court, pursuant to I.C. 33-24-6-10, temporarily transfers the above named judges to the Montgomery Circuit and Superior Courts for the purpose of reassignment of felony or misdemeanor cases. In the event it becomes necessary to reassign a felony or misdemeanor case, the cases will be reassigned on a rotating basis to the above named judges in the order in which they are listed.

#### **LR54-CR13-5**

##### **Appointment of Special Judge**

In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall be certified to the Indiana Supreme Court for appointment of a special judge. In the event the judge presiding in a felony or misdemeanor case concludes that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a special judge, such judge may request the Indiana Supreme Court for such appointment.

#### **LR54-CR00-6**

##### **Discovery**

The Circuit and Superior Courts have adopted a standard order for exchange of discovery materials between the State and

the Defense. The order is incorporated in these rules as Criminal Appendix A.

#### **LR54-CR00-7**

##### **Bond Schedule**

The Circuit and Superior Courts have adopted a Bond Schedule governing the amount and conditions of bail in criminal cases. This schedule is incorporated in these rules as Criminal Appendix B.

#### **LR54-CR00-8**

##### **Schedule of Fees**

The Montgomery County Court Referral Program, pursuant to IC 12-23-14-16, adopts the following schedule of fees for clients enrolled in the court administered alcohol and drug services program.

<b>Adult Offender Program Fee --</b> Includes Assessment & Case Management	\$270
<b>Juvenile Offender Assessment Fee --</b>	\$75
<b>Adult Offender Case Management Only Fee --</b> No Assessment	\$50
<b>Re-Assessment Fee --</b>	\$100
<b>Adult Offender Transfer Out Fee --</b> No Assessment & Intra of Interstate Transfer Out	\$100

Prime for Life Advance Substance Abuse Education Program Fee --	\$130
Drug Testing Fee --	\$10

**CRIMINAL APPENDIX A**

STATE OF INDIANA	)	IN THE MONTGOMERY _____ COURT
	)	SS:
COUNTY OF MONTGOMERY	)	CAUSE NO. _____
THE STATE OF INDIANA	)	
	)	
vs.	)	
	)	
_____	)	

**ORDER ON DISCOVERY**

1. State Disclosure:

The State shall disclose to the Defense the following material and information within its possession or control within 10 days.

- (a) The names, last known addresses, and telephone numbers of persons whom the State may call as witnesses, together with their relevant written or recorded statements.
- (b) Any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgment of such statements.
- (c) A transcript of those portions of grand jury minutes containing testimony of persons whom the Prosecuting Attorney intends to call as witnesses at the hearing or trial, as designated by the Defense after listening to the recording of the testimony.
- (d) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.
- (e) Any books, papers, documents, photographs or tangible objects which the Prosecuting Attorney intends to use in the hearing or trial or which were obtained from or belong to the accused.

- (f) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.
- (g) Any evidence which tends to negate the guilt of the accused as to the offense charged or which would tend to mitigate his punishment.
- (h) Transcript of probable cause hearing, if any.
- (i) A list of the dates and times that the accused appeared in any lineups including photographic lineups; the name and addresses of person who appeared or whose picture was used in each of said lineups with the accused; the names and addresses of any persons who viewed the lineups as witnesses or victims, and any written or recorded statements or any existing summaries or oral statements made by anyone regarding said identification after viewing the lineups.
- (j) Any evidence of other crimes, wrongs or acts that the State intends to admit pursuant to Rule of Evidence 404(b).
- (k) Any evidence of specific instances of conduct that the State intends to admit pursuant to Rule of Evidence 405(b)

The State may perform these obligations in any manner mutually agreeable to itself and the Defense counselor by notifying the Defense counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed, at specified reasonable times and places.

## 2. Defense Disclosure:

The Defense shall disclose to the State the following material and information within its possession or control within 30 days.

- (a) The names, addresses and telephone numbers of person whom the Defense may call as witnesses along with a record of prior criminal convictions.
- (b) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.
- (c) Any medical or scientific reports relating to the accused or to any evidence which may be used at a hearing or trial.

- (d) Any defenses, procedural or substantive, which the Defense intends to make at a hearing or trial.

3. Limitations:

- (a) Discretionary Protective Order. The Court may deny disclosure if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweigh any usefulness of the disclosure to counsel.
- (b) Matters not subject to disclosure:
  - (1) Work product. Disclosure is not required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the State or members of its legal or investigative staffs, or of Defense counsel or his or her staff.
  - (2) Informants. Disclosure of an informant identity will not be required where there is a paramount interest in non-disclosure and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure of the identity of witnesses to be produced at a hearing or trial will be required.
  - (3) Any matters protected by law.

4. Continuing Discovery and Sanctions:

- (a) Discovery is a continuing Order through trial.
- (b) No written motion is required except to compel discovery, for a protective order, or for an extension of time.
- (c) Failure of either side to comply with this Order within 10 days before trial may result in exclusion of evidence at trial or other appropriate sanction.

---

Date

---

Judge

## **CRIMINAL APPENDIX B**

### **BAIL BOND SCHEDULE**

#### **A. Conditions of Bond**

All bail bonds posted by defendants are subject to the following conditions:

- (1) Defendant shall appear in Court at all times required by the Court;
- (2) Defendant shall not leave the State of Indiana without the prior written consent of the Court;
- (3) Defendant shall not commit or be arrested for another criminal offense;
- (4) Defendant shall keep his attorney and the Court informed in writing of any change of address within 24 hours of such change; and
- (5) any other condition ordered by the Court.

Violation of any condition may result in revocation of bond and issuance of an arrest warrant.

#### **B. OWI and Controlled Substance Offenses**

The following offenses shall require a cash only bond in the amount of \$800; no surety bonds will be permitted unless ordered by the Circuit or Superior Courts.

##### **(1) OWI Offenses:**

- Operating With .08 BAC, I.C. 9-30-5-1(a)
- Operating With .15 BAC, I.C. 9-30-5-1(b)
- Operating With Controlled Substance, I.C. 9-30-5-1(c)
- Operating While Intoxicated, I.C. 9-30-5-2

- Operating With .08 BAC, .15BAC, Controlled Substance or While Intoxicated [as Class D Felony], I.C.9-30-5-3
- Operating With .08 BAC, .15 BAC, Controlled Substance or While Intoxicated, Causing Serious Bodily Injury, I.C. 9-30-5-4

(2) Controlled Substances Offenses:

- Dealing in Schedule V Controlled Substance, I.C. 35-48-4-4(a) [Class D Felony]
- Dealing in a Substance Represented to be a Controlled Substance, I.C. 35-48-4-4.5
- Possession of a Substance Represented to be a Controlled Substance, I.C. 35-48-4-4.6(b) [Class C or A Misdemeanor]
- Dealing in a Counterfeit Substance, I.C. 35-48-4-5 [Class D Felony]
- Possession of a Narcotic Drug, I.C. 35-48-4-6(a) [Class D Felony]
- Possession of a Controlled Substance, I.C. 35-48-4-7 [except on school bus or within 1,000' of school, park, etc., as Class C Felony]
- Manufacture of Paraphernalia, I.C. 35-48-4-8.1
- Possession of Paraphernalia, I.C. 35-48-4-8.3
- Dealing in Paraphernalia, I.C. 35-48-4-8.5
- Dealing in Marijuana, Hash Oil or Hashish, I.C. 35-48-4-10 [except as Class C Felony, -10(b)(2)]
- Possession of Marijuana, Hash Oil or Hashish, I.C. 35-48-4-11
- Visiting or Maintaining a Common Nuisance, I.C. 35-48-4-13
- Offenses Relating to Registration Labeling and Prescription Forms, I.C. 35-48-4-14 [except as Class C Felony, -14(c-d)]
- Possession of Chemical Agents or Precursors With Intent to Manufacture Controlled Substances, I.C. 35-48-4-14.5 [except with firearm, Class C Felony, -14.5(b)(1), -14.5(c)(1-2), -14.5(f) or within 1,000 feet of school, etc].



C. **Felonies**

<b><u>Offense</u></b>	<b><u>Surety Bond</u></b>	<b><u>Cash Bond</u></b>
Murder	No Bond	No bond
Class A	\$50,000	\$10,000
Class B	\$10,000	\$5,000
Class C	\$ 4,000	\$1,000
Class D	\$ 2,000	\$500
Habitual Offender	\$30,000	\$5,000
Failure to Appear	Hearing Required	

D. **Misdemeanors**

<b><u>Offense</u></b>	<b><u>Cash</u></b>
Class A	\$500
Class B	\$400
Class C	\$300

E. The court may, on its own motion or the motion of the Prosecuting Attorney, by order fix a higher bond under compelling circumstances.

F. If a person is arrested without warrant on a misdemeanor charge and is unable to post bond after the expiration of 48 hours in custody, the sheriff shall release the person subject to his written promise to appear in court.

G. **Motion for Bond Reduction and Property Bond**

All pre-trial motions for bond reduction or requests for approval of property bond shall be presented to the Court in writing and shall be scheduled for hearing upon proper notice to the Prosecuting Attorney.

H. **Multiple Charges**

This bond schedule shall apply to the highest charge pending against a person if multiple charges are or may be filed. If the listed bond amount is inappropriate under the circumstances, the Prosecuting Attorney shall bring such circumstances to the attention of the Court by written motion.

I. **Arrest While on Probation, Parole or Bond**

This bond schedule shall not be used for nor be applicable in the case of a person who has been arrested for a crime while on probation or parole. In such case, the person may be detained for a maximum period of 15 calendar days, during which period the Prosecuting Attorney shall notify the appropriate parole or probation authority, and the Court shall determine the proper amount of bond, if any. The Montgomery County Police Department may authorize transfer of persons held on petitions to revoke or modify probation to the Work Release Facility subject to court approval.

J. **No Contact Conditions**

Pursuant to I.C. 35-33-8-3.2(a)(4), a person who is arrested for any of the offenses listed below shall be held for 12 hours before release from custody, unless released sooner pursuant to a court order. The release of such person on bail shall be conditioned upon the person having no direct or indirect contact with the alleged victim or any other individual involved in the circumstances of the offense while the charge or case is pending. During regular court business hours the Prosecuting Attorney shall petition a Judge for such no-contact order. If a no-contact order is needed at times other than regular court business hours, the Prosecuting Attorney or the Sheriff may contact a Judge and request release of the arrested person on bond or an oral authorization for a no-contact order, which shall be reduced to a written no-contact order and submitted to the Judge on the next business day of the Court. The person to be released shall be notified of the no-contact condition of the bond and the oral authorization therefor by a letter from the Sheriff with receipt acknowledged by the person, in substantially the form set forth in the attached Appendix C.

The applicable offenses are as follows:

I.C. 35-42-2-1	Battery
I.C. 35-42-2-1.3	Domestic Battery
I.C. 35-42-2-1.5	Aggravated Battery

I.C. 35-42-2-2	Criminal Recklessness/Hazing
I.C. 35-42-2-3	Provocation
I.C. 35-42-2-6	Battery by Bodily Waste
I.C. 35-42-3-2	Kidnapping
I.C. 35-42-3-3	Confinement
I.C. 35-42-3-4	Interference With Custody
I.C. 35-42-4-1	Rape
I.C. 35-42-4-2	Criminal Deviate Conduct
I.C. 35-42-4-3	Child Molesting
I.C. 35-42-4-4	Child Exploitation
I.C. 35-42-4-5	Vicarious Sexual Gratification
I.C. 35-42-4-6	Child Solicitation
I.C. 35-42-4-7	Child Seduction
I.C. 35-42-4-8	Sexual Battery
I.C. 35-42-4-9	Sexual Misconduct
I.C. 35-43-2-1.5	Residential Entry
I.C. 35-43-2-2	Criminal Trespass
I.C. 35-45-2-1	Intimidation
I.C. 35-45-2-2	Harassment
I.C. 35-45-2-5	Interference With Reporting a Crime
I.C. 35-45-4-5	Voyeurism
I.C. 35-45-9-4	Criminal Gang Intimidation
I.C. 35-45-10-5	Stalking
I.C. 35-46-1-15.1	Invasion of Privacy
I.C. 35-46-1-3	Incest
I.C. 35-46-1-4	Neglect of a Dependent
I.C. 35-47-4-3	Pointing a Firearm

K. **Application of Bond to Financial Obligations**

The balance of the cash bond, after fees retained by the Clerk for the Bond Administration Fund, shall be applied to any financial obligation imposed by the Court in its disposition of the case, including but not limited to: fines, costs, restitution, probation user fees, substance abuse assessment fees, drug interdiction fees, and domestic violence fees.

**CRIMINAL APPENDIX C**

(letterhead of)

**SHERIFF OF MONTGOMERY COUNTY, INDIANA**

**DATE:**

**TO:**

By order of \_\_\_\_\_, Judge of the Montgomery Circuit/Superior 1/Superior 2 Court, you are hereby notified that you are released from the custody of the Sheriff of Montgomery County, Indiana, on this date, on bond authorized upon the condition that **you shall have no contact, whether direct or indirect, with the following persons:**

\_\_\_\_\_

\_\_\_\_\_

while the charge(s) or case against you is (are) pending. **THIS ORAL ORDER OF THE JUDGE IS EFFECTIVE IMMEDIATELY.** A written order shall be issued by the Court on its next business day.

Sheriff of Montgomery County

By \_\_\_\_\_  
(signature of officer)

\_\_\_\_\_  
(printed name)

RECEIPT AND ACKNOWLEDGMENT OF NO-CONTACT ORDER  
AS A CONDITION OF RELEASE ON BAIL

The undersigned hereby acknowledges the receipt of a copy of the foregoing notification that a **NO-CONTACT ORDER** has been issued as a condition of release of the undersigned on bail and agrees to have no contact as ordered.

Received on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ .m.

\_\_\_\_\_  
( \_\_\_\_\_ )

## **Criminal Appendix D**

### **Plan for Allocation of Judicial Resources**

Cases shall be assigned to the Circuit Court, Superior Court 1, and Superior Court 2 of Montgomery County pursuant to LR54-AR00-1 and LR54-CR2.2-1. The judges of the courts shall annually review the caseload of each court and the weighted caseload statistics published by the Division of State Court Administration to determine whether the courts are within a range of 40 percentage points of the county average utilization of judicial resources. If any of the courts is not within range, the judges shall adopt such techniques as may be appropriate to adjust filing of cases, reallocate judicial time, share facilities, obtain appointed judicial officers, increase senior judge services, or adopt other measures to reduce such disparity.

## **Criminal Appendix E**

### **Jury Draw**

The Judges of the three courts shall appoint a Jury Administrator or Administrators pursuant to Indiana Jury Rule 2. The Montgomery County Clerk shall compile and maintain the jury pool annually by selecting names from lists approved by the Indiana Supreme Court.

Before November 15<sup>th</sup> of each year, the Clerk at the direction of the Jury Administrator(s) shall randomly draw 2000 names from the jury pool. Those persons shall make up the prospective jurors for the three courts for the ensuing calendar year. Not later than seven days after the draw, the Clerk shall, pursuant to Indiana Jury Rule 4, mail each person whose name was drawn a notice of selection for the jury pool, a juror qualification form and a jury questionnaire.

Not less than ten days prior to a jury trial a judge shall request the Court's Jury Administrator(s) to summon a jury. The judge will advise the Jury Administrator the number of prospective jurors required and when they should appear. The Jury Administrator will then select a panel of prospective jurors to be called and cause summons, including pertinent information for prospective jurors required by the jury rules, to be issued for members of the panel at least one week prior to the trial date.



## Local Probate Rules

LR54-PR00-1	Case Assignments
LR54-PR00-2	Notice
LR54-PR00-3	Filing of Papers
LR54-PR00-4	Bond
LR54-PR00-5	Inventory
LR54-PR00-6	Sale or Transfer of Real Estate
LR54-PR00-7	Sale of Personal Property
LR54-PR00-8	Accountings
LR54-PR00-9	Fees of Fiduciaries and Attorneys
LR54-PR00-10	Unsupervised Administration
LR54-PR00-11	Guardianships
LR54-PR00-12	Private Adoptions
LR54-PR00-13	Waiting Period for Adoptions
LR54-PR00-14	Settlement Proceedings
LR54-PR00-15	Wrongful Death Estates
LR54-PR00-16	Miscellaneous
Appendix A-1	Undertaking and Obligation
Appendix A-2	Lawyers Undertaking and Obligation
Appendix B	Certification of Account Balances
Appendix C	Guardian Ad Litem Report
Appendix D	Physician's Report
Appendix E-1	Biennial Report of Guardian (No Assets)
Appendix E-2	Biennial Report of Guardian (Restricted Account)
Appendix F-1	Instructions to Personal Representative of Supervised Estate
Appendix F-2	Instructions for Personal Representative of Unsupervised Estate
Appendix F-3	Instructions to Guardians
Appendix F-4	Instructions to Guardian Ad Litem
Appendix G	Maximum Fee Guidelines

**LR54-PR00-1**

**Case Assignments**

All probate actions and proceedings shall be assigned to Montgomery Superior Court 1.

**LR54-PR00-2**

**Notice**

A. Whenever notice by publication or written notice by mail is required to be given, the attorney shall prepare such notice and shall ensure that such notice is properly published or served and complies with all statutory requirements. It shall be the attorney's responsibility to ascertain and provide adequate proof regarding whether publication was timely made or notice was properly served prior to bringing a matter to the Court.

B. Notice of hearings and all other notices ordered by the Court to be given, other than by publication, shall be served by certified mail, return receipt requested.

C. When a petition is filed and a hearing thereon is ordered, a copy of the petition shall be sent with all notices.

D. Notice of administration of an estate shall be served on all readily ascertainable creditors of the decedent by mail; use of certified mail, return receipt requested, is recommended.

E. When a petition requesting that an estate be closed due to insolvency is filed, notice thereof shall be given to the Montgomery County Assessor, all claimants, all reasonably ascertainable creditors, and any other interested parties.

F. On or before three (3) months and fifteen (15) days after the date of the first published notice to creditors, the personal representative shall allow or disallow each claim which was filed within three (3) months after the date of the first published notice to creditors by filing a written statement with the Court showing the action taken as to each claim, and shall give written notice to a claimant if a claim has been disallowed in full or in part.

#### **LR54-PR00-3**

#### **Filing of Papers**

A. Petitions and other papers, including Inventories, Inheritance Tax Returns, and Final Accounts, shall be filed with the Clerk for transmittal to the Court.

B. When any paper is filed by mail, or left with the Clerk for filing, a self-addressed, stamped envelope shall be included for return of documents to the attorney. This provision shall not apply to attorneys for whom the Clerk has a "mail box" for distribution of copies of papers.

C. Attorneys shall prepare orders for all proceedings, except for orders determining inheritance taxes and except when expressly directed otherwise by the Court.

D. Every paper filed by or on behalf of a fiduciary in an estate or guardianship proceeding, including but not limited to Inventories, Petitions, and Accountings, shall be signed and verified by the fiduciary and signed by the attorney for the fiduciary.

E. All papers filed shall contain the attorney's name (not just firm name), address, telephone number and attorney's Registration Number.

F. All papers filed shall be on 8-1/2 by 11 inch paper. The Clerk shall refuse to accept any paper not in compliance with this rule, except for original wills and codicils which may be in a larger format.

G. A petition for the appointment of an individual personal representative or an individual guardian shall contain the social security number, home address, and date of birth of the proposed individual fiduciary. In the event of a change in home address, the individual personal representative or individual guardian shall notify the Court of such change.

H. The Instructions to the Personal Representative or Guardian, executed by the fiduciary, must be filed with the Court at the time letters are ordered to be issued.

**LR54-PR00-4**

**Bond**

A. In every estate and guardianship, the fiduciary, prior to the issuance of letters, shall file a corporate surety bond in an amount not less than the value of the property to be administered, plus the estimated value of annual rents and profits of all property, less the value of any property that the fiduciary, by express limitation of power, lacks the power to sell, convey or encumber without a court order, in such amount as shall be ordered by the Court, except as hereafter provided:

- (1) In an estate in which the will of the decedent provides that the bond may be waived, the Court may set a bond in an amount adequate to protect the rights of creditors, tax authorities, and legatees/devisees.
- (2) If the heirs or legatees/devisees have filed written request that the fiduciary serve without bond, the Court may set such bond in an amount adequate to protect the rights of creditors and tax authorities only.
- (3) If the fiduciary is an heir or legatee/devisee of the estate, the bond otherwise required may be reduced in an amount equal to said fiduciary's share of the estate.

- (4) No bond shall be required in any estate or guardianship in which a corporate fiduciary qualified by law to serve as such is either the fiduciary or one of the fiduciaries.
- (5) In an unsupervised estate, bond may be set at the discretion of the Court.
- (6) Upon the filing of a verified petition and for cause shown, the Court may waive the requirement that a fiduciary file a bond.

B. The name and address of the insurance agency from which a bond is obtained shall be typed or printed on all corporate bonds filed with the Court.

C. In lieu of a bond, a fiduciary may restrict transfer of all or part of the estate or guardianship liquid assets by placing them in a federally-insured financial institution with the following legend placed on the face of the account, instrument, or document evidencing the same: "NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF THE MONTGOMERY SUPERIOR COURT 1", and with an acknowledgement of such restriction placed on the face of such account, instrument, or document evidencing the same. In addition, an acknowledgement of the restriction by the financial institution must be filed with the Court within ten (10) working days after the establishment of such account. In all guardianships, both

guardian and attorney must also execute an acceptance form to ensure such compliance.(Probate Appendix A-1 and A-2).

D. All petitions to open an estate or guardianship shall set forth the probable value of the personal property plus the estimated annual rents and profits to be derived from the property in the estate or guardianship.

#### **LR54-PR00-5**

#### **Inventory**

A. A complete inventory shall be filed in all supervised estate and guardianship proceedings within the following applicable time periods:

(1) Estates: Within sixty (60) days after the appointment of the personal representative.

(2) Guardianships: Within ninety (90) days after the appointment of a permanent guardian, and within thirty (30) days after the appointment of a temporary guardian.

B. In the event an amended or partial inventory is filed, all subsequent inventories shall contain a recapitulation of prior inventories.

C. The inventory in an estate may be filed in a sealed envelope marked "CONFIDENTIAL: INVENTORY" and bearing the complete caption of the proceedings. The Clerk will store the

inventory separately from the case file and shall not make the inventory available for public inspection.

D. In unsupervised estates, the personal representative must prepare an inventory pursuant to I.C. 29-1-7.5-3.2(a) and certify the preparation and availability of the inventory, its supplement, or amendment within ten (10) days after completion of the inventory, supplement, or amendment.

#### **LR54-PR00-6**

#### **Sale or Transfer of Real Estate**

A. When a Petition to Sell Real Estate is filed in a supervised estate or guardianship, it shall be accompanied by a written professional appraisal setting forth the fair market value of the real estate, unless such appraisal was previously filed with the Inventory. Such written appraisal shall include the signature of the appraiser and a certification of disinterest in the subject real estate.

B. All such appraisals shall have been made within one (1) year of the date of the Petition to Sell Real Estate.

C. All deeds submitted to the Court for approval in either supervised estate or guardianship proceedings shall be submitted with the Report of Sale of Real Estate or at the time of the hearing on the Final Account. All such deeds shall be signed by the personal representative or guardian and notarized prior to submission. Complete copies of such deeds shall be



filed with the Court at the time the original is submitted for approval.

D. Whenever a Final Decree reflects that real estate located in Montgomery County has vested in heirs or devisees, the personal representative shall provide the Auditor with a copy of the decree and request the Auditor to transfer the real estate for tax purposes, all of which shall be reported as completed to the Court in the Supplemental Report or Closing Statement.

#### **LR54-PR00-7**

#### **Sale of Personal Property**

A. Except as provided otherwise in Subsection C, no Petition To Sell Personal Property at private sale in a supervised estate or guardianship shall be granted unless a written appraisal, setting forth the fair market value of said personal property, is filed with such Petition, unless such appraisal was previously filed with the Inventory.

B. All such appraisals shall have been made within one (1) year of the date of the Petition To Sell Personal Property.

C. No such written appraisal shall be required for the sale of assets which are traded on an open market and which have a readily ascertainable value. Such assets include, but are not limited to: Stocks traded on a national exchange, mutual funds, commodities, and precious metals.

**LR54-PR00-8**

**Accountings**

A. Whenever an estate is not closed within one (1) year, the personal representative shall:

(1) File an intermediate account with the Court within thirty (30) days after the expiration of one (1) year after the opening of the estate and of each succeeding year thereafter until such estate is closed. Such accounting shall comply with the provisions of I.C. 29-1-16-4 and 29-1-16-6 and:

(a) Shall state facts showing why the estate remains open and an estimated date of closing;

(b) Shall propose partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants; or

(2) File a statement with the Court stating the reasons why the estate has not been closed, the estimated date of closing, the extent to which partial distribution can be made, and showing cause for relief from the requirement of filing an intermediate accounting.

B. In the event an individual is appointed guardian to handle the financial affairs of a protected person, the guardian

shall file his first current account within thirty (30) days after the first anniversary of the date on which the letters were issued. Thereafter, all accountings shall be filed biennially.

C. All accountings concerning restricted guardianship bank accounts shall contain a verification of such account balances by an officer of the financial institution in which such guardianship bank accounts are held. (Probate Appendix B).

D. All social security, veterans, retirement, or Medicare benefits received on behalf of a minor or an incapacitated person shall be included and accounted for in the guardianship accountings unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility.

E. In all supervised estate and guardianship accountings, vouchers, cancelled checks, or photocopies of cancelled checks for the expenditures claimed shall be filed with the accounting. No affidavits in lieu of vouchers will be accepted from individual fiduciaries. An affidavit in lieu of vouchers may be accepted by the Court from a state or federally chartered financial institution which serves as a fiduciary, provided the financial institution retains the vouchers on file or by electronic recording device.

F. In all supervised estate and guardianship accountings, a notation shall be placed by each expenditure indicating the reason for or nature of the expenditure unless the payee name indicates the nature of the expenditure.

EXAMPLES: Woods Drug Store - medicines  
Dr. John Edwards  
Sam Davis - plumbing repair to 315 Main St.  
Myers Nursing Home

G. All accountings to the Court shall contain an itemized statement of the assets on hand.

H. No guardian or personal representative shall be discharged until receipts for all final distributions have been filed with the Final Account or Supplemental Report.

I. All accountings shall follow the prescribed statutory format (I.C. 29-1-16-4). Informal, handwritten, or transactional accountings will not be accepted.

J. In a supervised estate, all Court costs shall be paid and all allowed claims satisfied and released and proof thereof presented to the Court by the hearing on the Final Account.

K. The Federal Estate Tax Closing Letter and the Indiana Inheritance Tax Closing Letter (or the countersigned receipt), or a photocopy thereof, showing payment of all Federal Estate and/or Indiana Inheritance Tax liability payable by reason of a decedent's death, executed by the Internal Revenue Service or the Indiana Department of Revenue, shall be attached to the

Final Report or shall be filed prior to entry of an order on the Final Account.

**LR54-PR00-9**

**Fees of Fiduciaries and Attorneys**

A. No fees for fiduciaries or attorneys shall be paid out of any supervised estate, trust or guardianship without prior approval of the Court.

B. In a supervised estate, one-half (1/2) of the fees for the personal representative and attorney may be paid upon filing the Indiana Inheritance Tax Return. The balance of such fees may not be paid until the Court has approved the Final Account. The Final Account shall recite that any fees which have been paid prior to the filing of the Final Account (up to one-half of the fees) have been paid in accordance with the approval of the Court.

C. A guardian or guardian's attorney may petition for fees at the time of filing an Inventory, and at such other times as circumstances warrant, such as performance of unusual items of substantial work.

D. Guardian ad litem fees may be paid upon filing a Guardian ad litem's written status report. (Probate Appendix C).

E. In an unsupervised estate, the Court will not set nor take any action to authorize payment of attorney or fiduciary fees.

F. In any supervised estate in which a contract for legal services has been entered into prior or subsequent to the opening of the estate, the Court reserves the right to approve or disapprove the fee contracts consistent with the Court's fee guidelines. (See Maximum Fee Guidelines, Appendix G).

G. All petitions for attorney and/or fiduciary fees shall conform to the fee guidelines set forth under these rules and shall specifically set forth in detail all services performed, the calculation and the amount of the requested fee, and any prior fees approved by the Court. A separate petition shall be filed requesting fee determination, and neither the Inheritance Tax Return nor the Final Account shall serve as such petition for any estate, trust or guardianship.

H. In the case of an intestate decedent, any attorney fees or fiduciary fees due by reason of jointly held assets shall be assessed against the owner of such jointly held assets.

I. Unjustified delays by the fiduciary or attorney in carrying out duties will result in a reduction of fees.

#### **LR54-PR00-10**

#### **Unsupervised Administration**

A. Except in the case of an estate in which the decedent's will authorizes unsupervised administration, no petition for administration without Court supervision shall be

granted unless the consent requirement of I.C. 29-1-7.5-2(a)(4) is met, along with all other requirements of I.C. 29-1-7.5-2(a).

B. In an unsupervised estate, proof of satisfied allowed claims shall be presented to the Court on or before the date of the filing of the Closing Statement. The Closing Statement shall comply with LR54-PR00-8.K.

C. If an order is submitted on the Closing Statement, the order shall not provide for approval of the Closing Statement, or ratification of the same or of any acts of the personal representative. The order should provide that no proceedings involving the personal representative are pending in the Court three (3) months after the filing of the Closing Statement, that the appointment of the personal representative terminates by operation of law, and that the surety is discharged.

D. In an unsupervised estate, if the jurisdiction of the Court is invoked for any matter other than opening the estate, determining any inheritance tax due, and accepting the Closing Statement, the administration shall become a supervised administration for all purposes. In that event, the fiduciary and attorney shall give notice of such administration to all heirs, legatees and devisees, and other interested persons.

**LR54-PR00-11**

**Guardianships**

A. In guardianship proceedings to declare an adult incapacitated, a Physician's Report by the doctor treating the alleged incapacitated person and such additional evidence as may be required by the Court shall be presented to the Court either at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony. (See "Physician's Report", Probate\_Appendix D)

B. Upon the hearing on the petition for guardianship, the petitioner shall establish that the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed have received notice of the petition and the hearing thereon, and shall inform the Court as to any objections by any of said persons to the appointment of the guardian.

C. Biennial or annual accounts filed by the guardian of the person of a minor or an incapacitated person shall state the current residence of the minor or incapacitated person and his or her general welfare. If the incapacitated person is an adult, a report by the guardian, treating physician or the guardian ad litem shall be filed with the current account, verifying that the incapacity of the person continues since the



date the guardianship was established or since the date of the last current report and that living arrangements for the incapacitated person are appropriate. [(See "Biennial Report of Guardian", Probate Appendix E-1 (No Assets) and E-2 (Restricted Accounts))].

D. The following information shall be included in the Petition for the Appointment of a Guardian for the person of a minor:

- (1) The minor's current address;
- (2) The places where the minor has lived within the previous two (2) years and the names and present addresses of the persons with whom the child has resided during that period;
- (3) Whether, to the petitioner's knowledge, any person not a party to the guardianship proceedings has physical custody of the child or claims to have custody or visitation rights with respect to the child; and
- (4) Whether, to the petitioner's knowledge, any other litigation is pending concerning the custody of the child in this or any other state.

E. Nothing herein shall be deemed as amending, superseding, or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States

of America, and every fiduciary and attorney shall comply with same if applicable.

F. The guardian shall obtain Court approval prior to taking any action on any financial matter pertaining to performance of the guardian's duties and responsibilities.

G. In all settlement proceedings (wrongful death, minor's settlement, or incapacitated person's settlement), the Court reserves the right to appoint an attorney or guardian ad litem for the injured party, and shall require an open hearing.

#### **LR54-PR00-12**

#### **Private Adoptions**

A. In addition to statutory requirements set forth in the Indiana Code for "private" or "independent" adoptions, the procedures set forth herein must be followed before a private placement adoption will be granted. This rule shall not apply to adoptions by a stepparent when the child is in the custody of the natural parent who is married to such stepparent.

B. Pre-Adoption Investigation. Prior to filing the Petition for Adoption, if the petitioners want temporary custody of the child, a pre-placement adoption investigation must be completed and the prior written approval of such placement must be obtained from a licensed child-placing agency or the Montgomery County Office of the Department of Child Services, unless such approval is not required pursuant to I.C. 31-19-7-1

or is waived by the Court as provided therein. Such investigation may be performed prior to the birth of the child and before the identity of the mother of the child is known.

The Adoption Investigation Report must include the following:

- (1) Home - physical description of neighborhood, house, housekeeping standards.
- (2) Motivation and Understanding of Adoption: reasons to adopt, understanding of adoption and responsibilities to child, if a private placement, how petitioners became aware of the child.
- (3) Family Members
  - (a) Adoptive father: d/o/b and age, social/educational history, likes, dislikes, hobbies, employment.
  - (b) Adoptive mother: same as above
  - (c) Other children: attitudes and opinions about adoption; behavior and school performances with verifying school records.
  - (d) Other household members: attitudes/opinions regarding adoption; income; health.
- (4) Police record check of household members.
- (5) Marriage - date of marriage; information about length of courtship; each spouse's feelings, opinions,

attitudes about self, other spouse, and their marriage.

- (6) Child Rearing Patterns/Child Care Plans: information about discipline, educational expectations of children in household and prospective adoptee.
- (7) Employment/Finances/Insurance: for anyone in household.
- (8) Health/Medical: for anyone in household.
- (9) Information about prospective adoptee: birth weight and height, Apgar scores, any birth difficulties; if not newborn, previous history, behavior, etc.
- (10) Natural Parents: nonidentifying social history, education, employment, family and medical history.
- (11) Psychological Evaluation on each adoptive parent - attach report.
- (12) References - at least three (3).
- (13) Recommendation

C. Temporary Custody. If the petitioners are "pre-qualified" (meaning a favorable pre-placement adoption investigation has been completed by the Montgomery County Office of the Department of Child Services or by a licensed agency, which recommends in writing immediate placement of a child) and the Adoption Investigation Report accompanies the filing of the Petition for Adoption, then the Court may issue an order

authorizing the petitioners to have temporary custody of the child. The Court must be satisfied that immediate placement of the child is in the child's best interest. The Court will then assist the petitioners by authorizing release of the child directly to the petitioners from the hospital, if requested by the petitioners and approved in writing by the natural mother, until the hearing on the natural parents' consent and voluntary relinquishment of parental rights. Such hearing will be held no sooner than seventy-two (72) hours following the filing of the Petition and the Report (excluding Saturdays, Sundays, and holidays). If the petitioners are not pre-qualified, then they may not take physical custody of the child (either from the hospital or the natural parents) prior to order of the Court authorizing such placement. Such unauthorized custody may be grounds for removal of the child from the petitioners' custody and denial of the Petition for Adoption. Such an order for placement will only be issued upon the petitioners' filing of a favorable Adoption Investigation Report, which recommends the placement.

D. Forms Required. Upon filing the Petition for Adoption, petitioners must also file the following documents:

- (1) A statement, under oath, relating how petitioners learned of the child and how and when arrangements for placement and adoption were

made, including the names and relationships, if any, of the petitioners to the natural parents and all other persons involved in such arrangements.

(2) A Financial Disclosure Affidavit stating any and all sums paid or expected to be paid in connection with the adoption, the purpose for such payments, and the recipient(s) thereof. This affidavit will remain confidential, will only be open to inspection by the Court, and is intended to insure that unauthorized or illegal expenditures are not made to induce the placement or adoption.

(3) A written consent to the adoption by both the natural mother and the natural father. Such consents must be executed after the child is born and in all other respects must conform with I.C. 31-19-9. If the natural father refuses to sign a consent to the adoption, or if his identity or whereabouts are unknown, then in lieu of filing such consent the petitioners' attorney should file, and have served upon the natural father in the form prescribed by I.C. 31-19-4, a notice of the adoption proceeding.

E. Supplemental Report. Within six (6) to twelve (12) months after the filing of the Petition for Adoption, a follow-up report must be filed with the Court by the Department of Child Services or a licensed agency confirming that there have been no substantial changes in the Pre-Adoption or Adoption Investigation Report filed contemporaneously with, or shortly after, the filing of the Petition for Adoption.

#### **LR54-PR00-13**

##### **Waiting Period for Adoptions**

Except for good cause shown, no final hearing for adoption of a minor shall take place until the adopting couple (or the birth parent and adoptive stepparent) have been married for at least one (1) year and the child has been in the home of the adoptive parent(s) for at least three (3) months.

#### **LR54-PR00-14**

##### **Settlement Proceedings**

A. Minor's Settlements. In all proceedings for approval of a minor's settlement:

- (1) A hearing shall be held at which evidence is presented so as to satisfy the Court that the settlement fully protects the minor's rights and interest.

- (2) The Court may at any time appoint an attorney or guardian ad litem for the minor.
- (3) A custodial parent or the guardian of the minor must be present at the hearing, and the Court may require the attendance of the minor.
- (4) A guardianship proceeding must be opened, unless the net proceeds to the minor are less than the amount that requires a guardianship, in which case the proposed settlement may be approved in the civil tort proceeding.

B. Bond or Restriction of Account. The guardian shall post bond or in lieu of bond shall comply with LR54-PR00-4.C.

#### **LR54-PR00-15**

##### **Wrongful Death Estates**

Status Report. When an estate for the sole purpose of prosecuting a wrongful death claim remains open for two (2) years, the personal representative shall file an annual status report as to such claim, due thirty (30) days after the second anniversary of the appointment of the personal representative and annually thereafter.



**Miscellaneous**

A. In those matters for which the Court has authority to grant an extension of time, the Court may grant one thirty (30) day extension upon the filing of a written petition on or before the otherwise applicable deadline. An extension of time may be granted only upon the filing of a verified petition setting forth good cause.

B. The personal representative in any supervised or unsupervised estate, any guardian, and any guardian ad litem shall sign and file with the Court their respective instruction forms, before letters shall be issued by the Clerk. (Probate Appendix F-1, F-2, F-3, F-4).

C. The forms which are appended to these rules have been prepared for use in Montgomery Superior Court 1, in accordance with the local rule which assigns probate proceedings to Superior Court 1. However, to the extent that a probate proceeding is conducted in Montgomery Circuit Court or Montgomery Superior Court 2, the same forms shall be applicable and the court designation shall be changed to the court in which the proceeding is pending.

**PROBATE APPENDIX A-1**

**UNDERTAKING AND OBLIGATION**

The undersigned financial institution agrees to deposit the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) into an account in the name of \_\_\_\_\_ with said account to be a restricted account pursuant to the following conditions: (a) Said account shall contain guaranteed certificate(s) of investment and/or certificate(s) of deposits whereby the principal of said certificate(s) shall not be subject to depletion by economic changes in the marketplace; (b) withdrawals of said account(s) may be made ONLY upon written Order of the Montgomery Superior Court 1 in Cause No. \_\_\_\_\_ and (c) any withdrawal must be approved by the Court.

Copies of the Signature Card and Passbook or Certificate(s) of Deposit evidencing such restricted deposits are to be filed with the Montgomery Superior Court 1 within ten (10) working days from the date of the Order approving said restricted account(s).

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
NAME OF FINANCIAL INSTITUTION

**PROBATE APPENDIX A-2**

STATE OF INDIANA                    )     IN THE MONTGOMERY SUPERIOR COURT  
  )SS:  
COUNTY OF MONTGOMERY            )  
  CAUSE NO. \_\_\_\_\_  
IN THE MATTER OF THE             )  
  )  
GUARDIANSHIP OF                    )  
  )  
\_\_\_\_\_  
  )

**LAWYER'S UNDERTAKING AND OBLIGATION**

I, the undersigned guardian, having been appointed by the Montgomery Superior Court 1, on this date, hereby authorize my attorney, \_\_\_\_\_, to deposit all of the net guardianship assets, in the amount of \$\_\_\_\_\_, in a savings account in my name as guardian with the restriction that withdrawal of principal or interest may be made ONLY on written order of Montgomery Superior Court 1.

Date: \_\_\_\_\_

Guardian of \_\_\_\_\_

I, the undersigned, as an officer of this Court and as attorney for the above guardian, hereby assume and undertake personal responsibility to the above named protected person and to the Montgomery Superior Court 1, to make the restricted deposit above designated and to deliver copies of the SIGNATURE CARD and PASSBOOK evidencing such restricted deposit and the amount thereof to the Court within ten (10) days from date or to refund all of said funds to the Court forthwith upon demand.

Date: \_\_\_\_\_  
Attorney for Guardian  
Attorney No. \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**PROBATE APPENDIX B**  
**MONTGOMERY SUPERIOR COURT 1**  
**NO. 54D01-\_\_\_\_\_ GU\_\_\_\_\_**

**GUARDIANSHIP OF \_\_\_\_\_**

**CERTIFICATION OF ACCOUNT BALANCES**

In order to comply with the rules of the Montgomery Superior Court 1, I am required to file a Certification of Account Balances. Please certify the balances and names on the accounts I have listed below.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(Guardian)

For Bank Use Only:

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the last day of the period covered by this accounting, there was on deposit in this institution to the credit of the Guardian, the following balance:

<u>Name on Account</u>	<u>Account Number</u>	<u>Balance</u>	<u>Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Name and Address of Institution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Certifying Officer:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Title

Date

(Printed: \_\_\_\_\_)

**PROBATE APPENDIX C**

STATE OF INDIANA        )       IN THE MONTGOMERY SUPERIOR COURT 1  
                              ) SS:  
COUNTY OF MONTGOMERY )

IN THE MATTER OF THE        )  
GUARDIANSHIP OF                )       CAUSE NO. \_\_\_\_\_  
\_\_\_\_\_ )

**GUARDIAN AD LITEM REPORT**

\_\_\_\_\_ submits the following report on  
\_\_\_\_\_, a proposed protected person, based  
on an assessment of the respondent on the \_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_.

1. Describe the nature and type of the respondent's  
disability: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Describe the respondent's mental and physical condition;  
and, when it is appropriate, describe educational condition,  
adaptive behavior and social skills: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. State whether, in your opinion, the respondent is either  
totally incapable, or is partially capable, of making personal and  
financial decisions; and, if partially capable, state the kinds of  
decisions which the respondent can and cannot make. Include the  
reasons for this opinion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Describe the respondent's feelings about the proposed  
guardianship as well as the respondent's relationship with the  
potential guardian: \_\_\_\_\_  
\_\_\_\_\_

---

5. Describe the respondent's assets and estimate the value thereof: \_\_\_\_\_

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6. In your opinion, is guardianship necessary for the respondent at this point in time? Include the reason for this opinion: \_\_\_\_\_

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7. What, in your opinion, is the most appropriate living arrangement for the respondent; and, if applicable, describe the most appropriate treatment or habilitation plan. Include the reasons for your opinion: \_\_\_\_\_

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Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Address: \_\_\_\_\_

City and State: \_\_\_\_\_

Telephone: \_\_\_\_\_



**PROBATE APPENDIX D**

STATE OF INDIANA	)	IN THE MONTGOMERY SUPERIOR COURT 1
	)	
COUNTY OF MONTGOMERY	)	SS:
	)	
IN THE MATTER OF THE	)	
GUARDIANSHIP OF	)	
_____	)	CAUSE NO. _____

**PHYSICIAN'S REPORT**

\_\_\_\_\_, a physician licensed to practice medicine in all its branches in the State of Indiana, submits the following report on \_\_\_\_\_, "patient", based on an examination of the patient on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

1. Describe the nature and type of the patient's disability: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Describe the patient's mental and physical condition; and, when it is appropriate, describe educational condition, adaptive behavior and social skills:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. State whether, in your opinion, the patient is either totally incapable, or is partially capable of making personal and financial decisions; and, if partially capable, state the kinds of decisions which the patient can and cannot make. Include the reasons for this opinion.  
\_\_\_\_\_

---

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4. What, in your opinion, is the most appropriate living arrangement for the patient; and, if applicable, describe the most appropriate treatment or habilitation plan. Include the reasons for your opinion.

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5. Can the patient appear in court without injury to his/her health? \_\_\_\_\_

If the answer is no, explain the medical reasons for your answer. \_\_\_\_\_

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6. Is the patient capable of consenting to the appointment of a guardian?

[ ] Yes

[ ] No

I affirm under the penalties for perjury that the foregoing representations are true.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Address: \_\_\_\_\_

City and State: \_\_\_\_\_

Telephone: \_\_\_\_\_

This report must be signed by a physician. If the description of the respondent's mental, physical and educational condition, adaptive behavior or social skills is based on evaluations by other professionals, all professionals preparing evaluations must sign the report. Evaluations on which the report is based must have been performed within three (3) months of the date of the filing of the petition.

Names and signatures of other persons who performed evaluations upon which this report is based:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**PROBATE APPENDIX E-1**

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MONTGOMERY)       CAUSE NO.   54D01-\_\_\_\_\_-GU-\_\_\_\_\_  
  
IN THE MATTER OF THE        )  
                                  )  
GUARDIANSHIP OF            )  
                                  )  
\_\_\_\_\_,                        )  
Minor                         )

**BIENNIAL REPORT OF GUARDIAN (NO ASSETS)**

\_\_\_\_\_, Guardian of the minor, being  
duly sworn upon (his) (her) oath, states as follows:

1. Petitioner was appointed as Guardian of \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The minor was  
\_\_\_\_\_ years of age at the time of the Guardian's appointment.

2. The minor is presently enrolled at \_\_\_\_\_  
school in \_\_\_\_\_, Indiana, and is in the \_\_\_\_\_  
grade.

3. The minor resides with the Guardian on a full-time  
basis at \_\_\_\_\_, \_\_\_\_\_, Indiana.

4. At the time the guardianship was established, the minor  
had no assets or income, and the minor has acquired no assets or  
income since the guardianship was established.

5. \_\_\_\_\_

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Wherefore, \_\_\_\_\_, the Guardian herein,  
requests that the Court approve this report.

I affirm under the penalties of perjury that the foregoing  
representations are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Guardian of Minor

**PROBATE APPENDIX E-2**

STATE OF INDIANA                    )     IN THE MONTGOMERY SUPERIOR COURT 1  
  ) SS:  
COUNTY OF MONTGOMERY            )     CAUSE NO. 54D01-\_\_\_\_\_-GU-\_\_\_\_\_  
  
IN THE MATTER OF THE             )  
  )  
GUARDIANSHIP OF                    )  
  )  
\_\_\_\_\_,                                 )  
Minor                                 )

**BIENNIAL REPORT OF GUARDIAN (RESTRICTED ACCOUNT)**

\_\_\_\_\_, Guardian of the minor,  
being duly sworn upon (his) (her) oath, states as follows:

1. Petitioner was appointed as Guardian of \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The minor was  
\_\_\_\_\_ years of age at the time of the Guardian's appointment.

2. The minor is presently enrolled at \_\_\_\_\_  
school in \_\_\_\_\_, Indiana, and is in the \_\_\_\_\_  
grade.

3. The minor resides with the Guardian on a full-time  
basis at \_\_\_\_\_, \_\_\_\_\_, Indiana.

4. At the time the guardianship was established, the minor  
was the recipient of funds which were placed in a restricted  
account. The amount of funds received by the minor and placed  
in the restricted account was \$\_\_\_\_\_. The financial  
institution where the restricted account is held is  
\_\_\_\_\_ (financial institution), \_\_\_\_\_,

Indiana, and the value of the minor's funds at this time is \$\_\_\_\_\_. Attached is a copy of the most recent account statement.

5. As guardian, I understand that the minor's funds cannot be withdrawn or spent without this Court's prior written approval.

6. \_\_\_\_\_

WHEREFORE, \_\_\_\_\_, the Guardian herein, requests that the Court approve this report.

I affirm under the penalties of perjury that the foregoing representations are true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Guardian of Minor

PROBATE APPENDIX F-1

MONTGOMERY SUPERIOR COURT 1

INSTRUCTIONS TO PERSONAL REPRESENTATIVE OF SUPERVISED ESTATE

Read carefully; date and sign one copy and return it to the Court within 10 days. Keep a copy for your reference.

You have been appointed PERSONAL REPRESENTATIVE of the estate of a deceased person. It is important that you understand the significance of the appointment and your responsibilities.

Listed below are some of your duties but not necessarily all of them. These duties are not listed in any order of priority. Ask the attorney for the estate to fully explain to you each of the items below and to tell you about any other duties you have in your particular circumstances. Though the attorney will probably file all papers at the Court, the ultimate responsibility to see that reports and returns are accurately prepared and filed rests with you.

As PERSONAL REPRESENTATIVE you are required to:

1. Locate all property owned individually or otherwise by the decedent at the date of death; and, ascertain the value of such assets as of date of death. Secure all property in safekeeping and maintain adequate insurance coverage; keep records of the assets. If applicable, obtain an appraisal of the property.

2. Inventory any safety deposit box in the presence of a representative of the County Assessor.

3. Keep a separate checking account or other type of transaction account for the estate and keep a record of all receipts and disbursements. **Never** commingle estate funds with any other funds or use them for other than estate purposes. Accounts and securities which are registered to the estate should be in your name "as Personal Representative for the Estate of (name of decedent)". Retain all paid bills and cancelled checks or other evidence of disbursement or distribution of any funds or assets of the estate for the Final Report to the Court.

4. Within two (2) months after you qualify and receive Letters of Personal Representative, you must file with the Court



an Inventory of all property found belonging to the decedent on date of death, giving values as of the date of death.

5. You may need to obtain Consent to Transfer forms from the County Assessor for accounts and securities in order to transfer such assets.

6. Collect any proceeds of life insurance on the life of the decedent which is payable to the estate. Obtain Form 712 from insurance company, if needed for taxes.

7. Have mail forwarded; complete change of address forms at the Post Office.

8. Inspect all documents and personal papers of the decedent and retain anything pertinent to tax reporting, location and value of assets, debts or obligations of or to the decedent, or any other items of significance to administering the final affairs of decedent.

9. Pay all legal debts and funeral bills; however, pay only priority claims timely filed if there is any question of solvency of the estate. Do not pay bills which are doubtful but refer them for Court determination. Do not make any distribution to any heir or beneficiary until at least five (5) months after the date of first publication of notice, unless an earlier distribution is allowed by Order of Court.

10. Prepare and file returns and pay taxes due (or claim any refund) for both State and Federal income taxes for the tax year in which the decedent died and any prior years, if applicable.

11. Prepare and file the Indiana Inheritance Tax Return and pay any tax due within nine (9) months after date of death. Do the same for Federal Estate Tax, if required, within nine (9) months after date of death.

12. Unless subject to an exception, obtain a federal tax identification number for the estate. Choose a tax year for the estate; file estate income tax returns and pay any tax due for both State and Federal income tax.

13. File a Final Account with the Court (with "vouchers"); obtain authorization for and make distributions; obtain receipts for distributions; file a Supplemental Report to the Court (with "vouchers") and obtain an order for closure of the estate.

14. Pay court costs and the expenses of administration when due.

15. Be sure to make payments and distributions to the right persons. You are responsible for incorrect payments or distributions.

**JUDGE DAVID A. AULT  
MONTGOMERY SUPERIOR COURT 1**

**I acknowledge receipt of a copy of the above instructions and have read and will follow said instructions carefully.**

Cause Number: \_\_\_\_\_

Estate of: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Personal Representative

Printed: \_\_\_\_\_

PROBATE APPENDIX F-2

MONTGOMERY SUPERIOR COURT 1

INSTRUCTIONS TO PERSONAL REPRESENTATIVE OF UNSUPERVISED ESTATE

Read carefully; date and sign one copy and return it to the Court within 10 days. Keep a copy for your reference.

You have been appointed PERSONAL REPRESENTATIVE of the estate of a deceased person. It is important that you understand the significance of the appointment and your responsibilities.

Listed below are some of your duties but not necessarily all of them. These duties are not listed in any order of priority. Ask the attorney for the estate to fully explain to you each of the items below and to tell you about any other duties you have in your particular circumstances. Though the attorney will probably file all papers at the Court, the ultimate responsibility to see that reports and returns are accurately prepared and filed rests with you.

As PERSONAL REPRESENTATIVE you are required to:

1. Locate all property owned individually or otherwise by the decedent at the date of death; and, ascertain the value of such assets as of date of death. Secure all property in safekeeping and maintain adequate insurance coverage; keep records of the assets. If applicable, obtain an appraisal of the property.

2. Inventory any safety deposit box in the presence of a representative of the County Assessor.

3. Keep a separate checking account or other type of transaction account for the estate and keep a record of all receipts and disbursements. **Never** commingle estate funds with any other funds or use them for other than estate purposes. Accounts and securities which are registered to the estate should be in your name "as Personal Representative for the Estate of (name of decedent)". Retain all paid bills and cancelled checks or other evidence of disbursement or distribution of any funds or assets of the estate for the Final Report to the Court.

4. Within two (2) months after you qualify and receive Letters of Personal Representative, you must prepare a verified

inventory of all property found belonging to the decedent on date of death, giving values as of the date of death. You must furnish a copy of the inventory, and any supplement or amendment, to any distributee who requests a copy.

5. You may need to obtain Consent to Transfer forms from the County Assessor for accounts and securities in order to transfer such assets.

6. Collect any proceeds of life insurance on the life of the decedent which is payable to the estate. Obtain Form 712 from insurance company, if needed for taxes.

7. Have mail forwarded; complete change of address forms at the Post Office.

8. Inspect all documents and personal papers of the decedent and retain anything pertinent to tax reporting, location and value of assets, debts or obligations of or to the decedent, or any other items of significance to administering the final affairs of decedent.

9. Pay all legal debts and funeral bills; however, pay only priority claims timely filed if there is any question of solvency of the Estate. Do not pay bills which are doubtful but refer them for Court determination. Do not make any distribution to any heir or beneficiary until at least five (5) months after the date of first publication of notice, unless an earlier distribution is allowed by Order of Court.

10. Prepare and file returns and pay taxes due (or claim any refund) for both State and Federal income taxes for the tax year in which the decedent died and any prior years, if applicable.

11. Prepare and file the Indiana Inheritance Tax Return and pay any tax due within nine (9) months after date of death. Do the same for Federal Estate Tax, if required, within nine (9) months after date of death.

12. Unless subject to an exception, obtain a federal tax identification number for the estate. Choose a tax year for the estate; file estate income tax returns and pay any tax due for both State and Federal income tax.

13. Make distributions and obtain receipts for distributions.

14. File a Closing Statement with the Court within one (1) year, send a copy to all distributees of the estate and to all creditors or other claimants whose claims are neither paid nor barred; furnish a full account in writing of the administration to the distributees.

15. Pay court costs and the expenses of administration when due.

16. Be sure to make payments and distributions to the right persons. You are responsible for incorrect payments or distributions.

**JUDGE DAVID A. AULT  
MONTGOMERY SUPERIOR COURT 1**

**I acknowledge receipt of a copy of the above instructions and have read and will follow said instructions carefully.**

Cause Number: \_\_\_\_\_

Estate of: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Personal Representative

Printed: \_\_\_\_\_

**PROBATE APPENDIX F-3**

**MONTGOMERY SUPERIOR COURT 1**

**INSTRUCTIONS TO GUARDIANS**

**Read carefully; date and sign one copy and return it to the Court within 10 days.** Keep a copy for your reference.

You have been appointed guardian of an individual who, because of some incapacity, is unable to care for his or her own financial and/or personal affairs. It is important that you understand the significance of this appointment and your responsibility as guardian.

Upon being appointed guardian, you are required to post a bond in the amount set by the Court and to take an oath to faithfully discharge your duties as guardian.

Listed below are some of your duties, but not necessarily all of them. Ask the attorney for the guardianship to fully explain to you each of the items below and to tell you about any other duties you have in your particular circumstances. Though the attorney will file all the papers with the Court, the ultimate responsibility to see that all reports and papers are accurately prepared and filed rests with you.

As guardian, you should be aware that you are required:

1) To file with the Court, within 90 days after your appointment, a verified inventory of all property belonging to the protected person;

2) To file with the Court a verified account, detailing all property and income received and all expenses paid, with vouchers or receipts to verify each expenditure of the guardianship, within 30 days of the first anniversary of your appointment, and then every two (2) years;

3) To pay bond premiums as they become due and court costs;

4) To file federal and state tax returns for the protected person and pay taxes;

5) To file a final accounting, detailing all property and income received and all expenses paid, with receipts to verify each expenditure, upon termination of the guardianship, due to the death of the protected person, or for any other reason;

6) To open an account, in your name as Guardian, in which all of the cash assets of the protected person are deposited, which account shall be used for all payments and disbursements on behalf of the guardianship and the protected person, and obtain and keep written proof (preferably cancelled checks) for all expenditures;

7) To obtain approval from the Court to use guardianship assets.

It is the duty of the guardian to protect and preserve the protected person's property, to account for such assets faithfully and to perform all the duties required by law of a guardian. You may **not** make expenditures or investments from guardianship funds without Court authorization.

Guardianship funds should **never** be commingled with personal funds. Accurate accounts must be kept and accurate reports made. Unauthorized use of guardianship funds may result in personal liability, and/or criminal prosecution.

It is important to understand that the guardian has the same duties and responsibilities concerning the protected person whether or not the protected person is a relative of the guardian.

If any questions arise during the guardianship, you should consult with your attorney.

**JUDGE DAVID A. AULT  
MONTGOMERY SUPERIOR COURT 1**

**I acknowledge receipt of a copy of the above instructions and have read and will follow said instructions carefully.**

Cause No: \_\_\_\_\_ Guardianship of: \_\_\_\_\_

Dated: \_\_\_\_\_

Guardian

Printed: \_\_\_\_\_

**PROBATE APPENDIX F-4**

**MONTGOMERY SUPERIOR COURT 1**

**INSTRUCTIONS TO GUARDIAN AD LITEM**

Your duties as Guardian Ad Litem, at a minimum, are to include all of the following:

1. Visit the person alleged to be legally incapacitated;
2. Explain to the person the nature, purpose, and legal consequences of appointment of a Guardian;
3. Explain to the person the hearing procedure and the person's rights in the hearing procedure, including but not limited to:
  - A. The right to contest the Petition;
  - B. The right to request limits on the Guardian's powers;
  - C. The name of the individual seeking to be appointed Guardian;
  - D. The right to object to a particular person or institution being appointed Guardian;
  - E. The right to be present at the hearing;
  - E. The right to be represented by legal counsel.
4. Contact the person's doctor for purposes of obtaining information regarding the physical and/or mental condition of the person;
5. Make determinations and inform the Court of those determinations on all of the following:
  - A. Whether the person alleged to be legally incapacitated wishes to be present at the hearing;
  - B. Whether the person alleged to be legally incapacitated wishes to contest the Petition;
  - C. Whether the person alleged to be legally incapacitated wishes limits to be placed on the Guardian's powers;
  - D. Whether the person alleged to be legally incapacitated objects to a particular person being appointed Guardian;
  - E. Whether it is in the best interests of the person alleged to be legally incapacitated that a Guardian be appointed;
  - F. Whether it is in the best interests of the person alleged to be legally incapacitated that the



individual seeking to be appointed Guardian actually  
be appointed Guardian;

- G. Whether it is in the best interests of the person  
alleged to be legally incapacitated that limits be  
placed on the Guardian's powers.

**JUDGE DAVID A. AULT**  
**MONTGOMERY SUPERIOR COURT 1**

**I acknowledge receipt of a copy of the above instructions and will  
read and follow said instructions carefully.**

Cause Number: \_\_\_\_\_

Guardianship of: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Guardian Ad Litem

\_\_\_\_\_  
Printed

PROBATE APPENDIX G

MAXIMUM FEE GUIDELINES AND RULES  
FOR SUPERVISED ESTATES

PROBATE APPENDIX G

**ATTORNEY FEES**

I. Administration:

Gross Estate services are considered to normally include: Opening of the estate, qualifying the personal representative, preparing and filing the Inventory, paying claims, collecting assets, preparing and filing non-extraordinary petitions, preparing and filing the Inheritance Tax Return, obtaining the Court order thereon and paying the taxes, preparing and filing the Final Report, obtaining order approving same, distributing assets, obtaining discharge of the personal representative, and preparing and serving all notices on interested parties and readily ascertainable creditors throughout the proceedings. This list shall not be considered to be exclusive.

A. Gross Estate:

Up to \$	50,000, not to exceed.....	6%
Next	50,000, not to exceed.....	5%
Next	200,000, not to exceed.....	4%
Next	700,000, not to exceed.....	2%
Over	1,000,000, not to exceed.....	1%

B. Miscellaneous - Extraordinary Services:

Sale of Real Estate.....\$500.00

Federal Estate Tax Return:

Basic Fee.....\$600.00

Assets exceeding those indicated

in Inheritance Tax Return .....1%

Inheritance Tax Return

Cash, stock, bonds, other intangibles - non  
probate assets.....1%

Other assets - non-probate assets.....1.5%

Petition - ex parte.....\$175.00

Other matters.....Attorney's usual hourly rate  
(Attorney's expertise in probate matters will be  
considered by the Court in determining the  
applicable hourly rate.)

II. MISCELLANEOUS:

Probate Will only.....\$175.00

Small Estate settlement procedure.....\$500.00

Indiana Inheritance Tax Return (see above)

Federal Estate Tax Return (see above)

III. WRONGFUL DEATH ADMINISTRATION:

Fees not to exceed:

Settlement prior to filing.....25%

Settlement after filing and prior to

Trial .....33-1/3%

Trial.....40%

Appeal, or extra work.....50%

#### IV. GENERAL:

Fees will be computed on an hourly basis only for extraordinary services or for services not specified above. Fee petitions requesting extraordinary fees must set forth services rendered with specificity. Extraordinary services, depending upon the circumstances prevailing in each individual matter, may include: Sale of personal property, sale of real property, partial distribution, defending a will, construing a will, contesting claims, adjusting tax matters, any contested hearing, petition for instructions, heirship determination, generating additional income for the estate, federal estate tax return, etc. All fee petitions must specifically set forth the fee requested for both the personal representative and the attorney and will be set for hearing. If all interested parties sign a waiver and consent stating that they have been advised the additional fee request exceeds the Court's guidelines and that the services as detailed are extraordinary, the Court may not require a hearing. A suggested form of acceptable waiver is attached. The Court will not determine and allow fees in an unsupervised administration. Fees determined on non-probate transferred assets should be charged against the transferees of such assets and not the estate.

## **PERSONAL REPRESENTATIVE FEES**

### **I. PROFESSIONAL:**

Their applicable reasonable rate to be reviewed in light of all prevailing circumstances.

### **II. NON-PROFESSIONAL:**

An amount not in excess of one-half (1/2) of the attorney's fee.

### **III. ATTORNEY:**

When the attorney also serves as the personal representative, an additional amount not in excess of one-third (1/3) of the attorney fee may be allowed, provided:

- A. Additional services have been performed which are normally done by the personal representative; and
- B. Assets of the estate warrant the allowance of additional fees.

## **LIMITATION ON FEES**

The combined total of the fees allowed to the personal representative and attorney for the administration of an estate should not exceed ten percent (10%) of the decedent's gross estate.

## **WAIVER AND CONSENT TO ALLOWANCE OF FEES IN EXCESS OF GUIDELINES**

When an attorney reasonably believes that extraordinary

circumstances exist and requests fees that exceed the Guidelines, it is suggested that all affected parties either sign a waiver and consent, or the fees be determined only after notice to the affected parties and hearing on the petition. The waiver and consent should not be merely a pro forma waiver and consent, but should be in substantially the following form:

**IMPORTANT: PLEASE READ BEFORE SIGNING!**

**WAIVER AND CONSENT**

The undersigned, an interested party in the Estate of \_\_\_\_\_, understands that:

- A. The maximum fee ordinarily allowed by the Court for legal services in this estate would amount to \$\_\_\_\_\_;
- B. The attorney has requested fees in the amount of \$\_\_\_\_\_, alleging that extraordinary and unusual services have been performed.

The undersigned, being fully advised, now consents to the allowance of the requested fee, waives any notice of hearing on the petition and requests that the Court allow fees in the amount of \$\_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Devisee/Heir